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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6292 OF 2012

Ms.Hema Gadgil]
Age:67 years, Occu: Retired]
R/at Savitri, 18, Tapobhumi Society,]
Dattawadi, Pune - 411 030.]..Petitioner.

V/s.

1. The Passport Officer,]
Passport Office, Pune]
MSFC Building, 270, Bhamburda,]
S.B.Road, Opp. Symbiosis College,]
Pune - 411 007.]
]
2. Union of India,]
Ministry of Corporate Affairs,]
Everest, 5th Floor, 100, Marine]
Drive, Mumbai - 400 002.]..Respondents.

None for the petitioner.

None for the respondents.

**CORAM : A.S.OKA AND
A.K. MENON, JJ.**

DATED : 6TH JANUARY, 2015

ORAL JUDGMENT (PER A.K.OKA, J.)

1. Called out for final hearing. None appears for the petitioner and the respondent.

2. On 8th April, 2002 a passport was issued by the Passport Office, Pune to the petitioner. The passport was issued to the petitioner in her name (Hema Prabhakar Gadgil) after her marriage. The passport was valid till 7th April, 2012. On 6th March, 2012, the petitioner applied for renewal of the passport. Challenge in the petition is to the communication dated 22nd May, 2012 issued by the Passport Office, Pune to the petitioner. The relevant part of the communication reads as under:-

*" Smt.Hema Gadgil,
Savitri 18 Tapobhoomi Soc
Dattawadi,
Pune 411 030.*

Sub : Grant of passport facilities

Madam,

Please refer to your application on the above subject.

Since you are a divorcee and using the surname of your ex-husband, you are requested to submit No objection

certificate from him to use his surname."

3. It is pointed out in the petition that in February, 2003 the marriage between the petitioner and her husband was dissolved by a decree of divorce.

4. On 7th August, 2012, a Division Bench of this Court issued notice to the respondents. There is no reply filed by the respondents. By further order dated 7th January, 2014, this Court issued notice for final disposal. The said notice for final disposal has been served to both the respondents. However, none appears for both the respondents.

5. The case made out in the petition is that the petitioner is using the surname of her ex-husband for the past 42 years. We have already quoted what is stated in the impugned communication. There is no law which prevents a wife from using her name adopted after the marriage containing the name and surname of her husband even after a decree of divorce is passed by a Court of competent jurisdiction. In fact, it is the right of the petitioner to use any name, including the name of her divorced husband. Therefore, in our view, the direction issued by the passport

authorities to obtain No objection certificate from the ex-husband is completely illegal. Right to obtain passport in accordance with law is held to be a fundamental right under Article 21 of the Constitution. The impugned communication being illegal violates the said right. In fact, the approach of the passport officer is perverse. We, therefore, proceed to set aside the communication dated 22nd May, 2012 and accordingly, we pass the following order:-

- (i) We set aside the impugned communication dated 22nd May, 2012;
- (ii) If the application made by the petitioner for renewal of passport is still pending, the same shall be decided by the passport authorities without insisting on the petitioner obtaining No objection certificate in writing from her ex-husband;
- (iii) If the application is still pending, the same shall be decided within a period of one month from the date on which an authenticated copy of this order is produced by the petitioner before the concerned passport authorities;
- (iv) The petition is allowed in the above terms.

(A.K.MENON, J.)

(A.S.OKA, J.)