IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4984 OF 2015

Mr. Rexon Philip.] … Petitioner

Versus

Mrs. Rinku Rexon and Anr.] … Respondents

Smt. Kokila Venkatachalam i/b Mrs. Indrayani M. Koparkar for Petitioner.
Mr. Mahesh Amle for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- SEPTEMBER 10, 2015

P. C. :-

1. Leave to amend, by which the Petitioner has been declined opportunity to cross-examine the mother of the Respondent. Amendment to be carried out forthwith.

2. Rule.

3. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

4. The challenge in this petition is to the order dated 29/08/2013 (on Exh.29) and order dated 01/09/2015, by which the

Petitioner has been disabled from cross-examining the Respondent, his wife and the wife's mother.

5. The record indicates that on 29/08/2013 itself, the Family Court had made an order at Exh.65 in which it was stated that in case the Petitioner does not proceed with the cross-examination, the cross-examination will be closed. The Petitioner had instituted Writ Petition No.8953 of 2013 before this Court, which was disposed of by order dated 15/04/2015. The order dated 29/08/2013 at Exh.65 was set aside. However, there is no specific reference to setting aside the order dated 29/08/2013 in respect of Exh.29. It is the later order, which had actually closed the cross-examination of the Petitioner.

6. Ordinarily, the Petitioner should have applied for review of clarification in Writ Petition No.8953 of 2013. However, since according the parties, this would entail further delay, the present petition is being entertained with the consent of the learned Counsel for Respondent-wife.

7. Further, leave is also granted to challenge the order dated 01/09/2015 by which the Petitioner is disabled from cross-examining the Respondent's mother.

8. Although, opportunity had been granted earlier to the Petitioner, for certain reason explained by the Petitioner in the petition, the Petitioner could not proceed with the cross-examination

on 29/08/2013. The position with regard to cross-examination of Respondent's mother, could have been avoided. However, in the interest of justice, yet another chance is required to be granted to the Petitioner. In fact, the learned Counsel has adopted a reasonable approach in the matter, insofar as orders disabling the Petitioner from cross-examining the Respondent or Respondent's mother are concerned.

9. The learned Counsel for Respondent however submitted that the Respondent is presently based in the U.K. and if permission is to be granted to the Petitioner to cross-examine the Respondent at this point of time, the Respondent will have to come from U.K. to face such cross-examination. The learned Counsel for Respondent stated that the Respondent, if directed, will attend the Court and offer herself for cross-examination. However, the expenses for the passage as well as some costs need to be awarded.

10. The learned Counsel for Respondent is right in the submission made by him. Whatever the reasons that prompted the Petition from not proceeding with the cross-examination, one thing is clear and that is that the Respondent's wife or for that matter her mother, are not to blame. Therefore, the Petitioner is required to pay costs. The learned Counsel for Respondent submits that the passage between U.K. and Mumbai is in the range of Rs,70,000/-. In these circumstances, subject to the Petitioner depositing before the Family Court costs of Rs.1,00,000/ (Rupees One Lac Only) on or before

15/11/2015, the impugned orders dated 29/08/2013 (on Exh.29) and 01/09/2015 denying opportunity of cross-examining the Respondent and her mother, are set aside. In case the costs are not deposited on or before 15/11/2015, this petition shall be deemed to have been dismissed and the Petitioner shall not claim any further opportunity to cross-examine the Respondent or Respondent's mother. In case, the costs are deposited, the Family Court is directed to post the matter on any date suitable to it between 16/12/2015 and 23/12/2015. This is because the learned Counsel for Respondent states that this is the time during which the Respondent will make herself available to face the cross-examination.

11. In view of the present order, it is obvious that the Family Court will not dispose of the Marriage Petition No.B-5 of 2008 until the Petitioner is offered an opportunity to cross-examine the Respondent. Insofar as the cross-examination of Respondent's mother is concerned the Family Court can fix any date after 15/11/2015, once the Petitioner has deposited the costs. The costs once deposited, may be withdrawn by the Respondent on producing a xerox copy of the airline ticket on the basis of which she shall have traveled into India.

12. The cross-examination shall have to be concluded during the period from 16/12/2015 and 23/12/2015. If, for any reason, the cross-examination is not concluded during the said period and the Petitioner requires the Respondent-wife to come once again, the Petitioner shall have to deposit further costs as well as the expenses

for passage between U.K. and India as the Family Court may determine. However, the Family Court is directed to conclude the cross-examination during the period between 16/12/2015 and 23/12/2015 itself.

13. Further, considering that the Marriage Petition is of the year 2008, the Family Court is directed to dispose of the same as expeditiously as possible and in any case, before 31/03/2016.

14. Rule is made absolute to the aforesaid extent.

15. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Order.