

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6940 OF 2015

Mr. Milind Bhalchandra Prabhu .. Petitioner

V/s

Dr. Meena Milind Prabhu and Another .. Respondents

Ms. Seetal Pandya and Poonam Kaur i/b Solicis Lex for the Petitioner.

Ms. Sumangala Biradar for Respondent No.1.

Mr. A.R. Metkari, Assistant Government Pleader for Respondent No.2.

CORAM : M.S. SONAK, J.

DATED : OCTOBER 6, 2015

P.C. :

. Rule.

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

3 This petition challenges the order dated 28 April 2015, by which the Petitioner has been declined opportunity to cross examine the Respondent.

4 Heard the learned Counsel for the parties.

5 If the impugned order is perused, it does transpire that the Petitioner was attempting unnecessarily delay the proceedings. The Respondent had closed her evidence by pursis on 4 April 2014. Despite opportunities, the Petitioner failed to cross examine the Respondent. It is only on 16 May 2015, that the Petitioner applied for leave to cross examine the Respondent and even here the Petitioner prayed for six weeks time to appoint another Lawyer and to obtain certain documents. By an impugned order, the Family Court has rejected this application dated 16 May 2015.

6 Although, the Petitioner does not deserve any indulgence as such, deprivation of opportunity to cross examine the Respondent in the facts and circumstances of the case, appears rather harsh. The learned Counsel for the Petitioner has stated that if one opportunity is granted to the Petitioner, the Petitioner will avail the same without seeking any further time and proceed with the cross examination of the Respondent without seeking any further excuse. Relying upon the said statement made by the learned Counsel for the Petitioner, it will be appropriate, if one such opportunity is granted to the

Petitioner. This shall, however, have to be subject to payment of exemplary costs by the Petitioner, particularly in view of the fact that the Petitioner is stated to be working in Gulf and it is on account of the Petitioner, the proceedings have been unnecessarily delayed. The grant of such opportunity will undoubtedly cause the inconvenience to the Respondent, who will have to be recalled for the purpose of facing the cross examination.

7 The learned Counsel for the parties have submitted that after examination of the Respondent, one more witness Mr. Anant Mallya has also been examined on behalf of the Respondent. The Petitioner did not cross examine the said witness and will have to recall the said witness as well for the purpose of cross examination. The application in this regard is pending consideration before the Family Court. The learned Counsel appearing for the Respondent upon obtaining instructions from the Respondent, has consented to this Court, considering the said application, though the same is still pending before the Family Court.

8 Again, although the Petitioner is not entitled to indulgence as such, subject to payment of substantial costs and by

fixing the appropriate time schedule for disposal of the entire matter, the interest of justice will be met, if opportunity is granted to the Petitioner to cross examine the said witness Mr. Anant Mallya as well. It is in the interest of both parties that the proceedings before the Family Court are expeditiously disposed of.

9 Therefore, upon cumulative consideration of aforesaid facts and circumstances, this Petition is disposed of by following order.

: O R D E R :

- (A) The impugned order dated 28 April 2015 is set aside.
- (B) The order declining the Petitioner leave to cross examine Mr. Anant Mallya is also set aside. The application for this purpose pending before the Family Court is disposed off.
- (C) The Respondent and said Mr. Anant Mallya shall appear before the Family Court on the date to be fixed by the Family Court and offer themselves for cross examination by the Petitioner. The Family Court is directed to fix an early date in the matter, so that the cross

examination of the Respondent and Mr. Anant Mallya is concluded as expeditiously as possible and in any case within four weeks from the date of production of an authenticated copy of this order.

(D) The Petitioner shall cross examine the Respondent and Mr. Anant Mallya on the dates to be fixed by the Family Court, without seeking any adjournment or without making any excuses. If for any reason attributable to the Petitioner, the cross examination cannot be completed within a period of four weeks from the date of production of an authenticated copy of this order, the Family Court shall not show any further indulgence to the Petitioner.

(E) The Family Court is directed to dispose the Petition No.A-935 of 2011 as expeditiously as possible and in any case within a period of four months from the date of production of an authenticated copy of this order.

(F) This order is made subject to the condition that the Petitioner pays to the Respondent an amount of Rs.50,000/- by way of costs on or before 19 October 2015 from today. In case, the costs are not paid on or before 19 October 2015, this Petition shall be deemed to have

been dismissed and the Family Court shall proceed to decide the Petition No.A-935 of 2011 in accordance with law and on its own merits. The costs to be paid by way of Demand Draft to the Respondent and a proof of the payment to be filed before the Family court.

(G) The parties are directed to appear before the Family Court on 19 October 2015 and produce an authenticated copy of this order.

(H) All concerned to act on an authenticated copy of this order.

(M.S. SONAK, J.)

C E R T I F I C A T E

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