

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6922 OF 2015

Smt. Heena Ghanshyam Patel ... Petitioner
Vs.
Ghanshyam Prabhulbhai Patel & Anr. ... Respondents

Ms. Sneha Singh i/b. Mr. A.M. Saraogi, Advocate for the petitioner.
Ms. Kokila Kalra, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JULY 23, 2015**

P.C.:

This Petition is directed against the order dated 9th June, 2015 of no cross-examination of respondent/husband passed by the learned Judge of the Family Court, Mumbai.

2. In this case, the Petition is filed by the wife for injunction and maintenance. Her evidence was over on 27th August, 2013 and she was cross-examined on the same day. The respondent/husband stepped in the box and filed affidavit-in-chief on 9th July, 2014. The matter was fixed for his cross-examination on 31st July, 2014. Thereafter on 23rd September, 2014, 27th November, 2014, 29th December, 2014 and 20th March, 2015, the learned counsel for the petitioner/wife did not remain present nor did he conduct the cross-examination of the respondent/husband and even the petitioner herself did not conduct the

cross-examination till 20th March, 2015. On 22nd April, 2015 the matter was fixed for cross-examination of respondent/husband but as Advocate Mr. Saraogi filed his Vakalatnama, time was granted and matter was fixed by the Court on 9th June, 2015. On 9th June, 2015, Advocate Mr. Yogendar Giri appeared, but he did not conduct cross-examination and therefore, the learned Judge passed the order of no cross examination and proceeded. The said order is challenged herewith.

3. The learned counsel for the petitioner submitted that the order passed by the learned Judge is illegal and is to be set aside. She submitted that on 9th June, 2015, the learned counsel for the petitioner/wife prayed for one day adjournment but the Court was not ready to adjourn the matter. She submitted that Advocate Yogendar Giri was not prepared and the cross-examination was supposed to be conducted by Advocate Saraogi. Hence, the said order needs to be set aside.

4. The learned counsel for the respondent submitted that on 9th June, 2015, the Court passed the order of no cross examination and thereafter the matter was fixed on 16th July, 2015. Second witness stepped in the box and his chief and cross-examination is complete. Now the matter is fixed for examination of third witness on 25th August, 2015.

5. Perused the order passed by the learned Judge of the Family Court, Mumbai and also the dates on which the matter was adjourned from time to time after 31st July, 2014. Though there is change of advocate, time was granted on 22nd April, 2015. It appears that adjournment of nearly two months was given on 22nd April, 2015 for preparation and the matter was fixed on 9th June, 2015. Surprisingly, Advocate Yogendar Giri for the petitioner was present but he refused to take cross-examination. As mentioned by the learned Family Court Judge, no application for adjournment was filed. Considering this, it appears that the learned Judge was right in passing No cross order. However, it is clearly a fault of the lawyer and therefore, I allow this Petition on the ground that opportunity to cross-examine is not to be denied to the petitioner/wife and she should not be deprived of fair trial. Hence, the order dated 9th June, 2015 is hereby set aside. The learned counsel for the petitioner/wife to cross-examine the respondent/husband on 25th August, 2015. No cross-examination of second witness is allowed, as the petitioner/wife has cross-examined the second witness. No adjournment is to be sought on 25th August, 2015.

6. Writ Petition is allowed.

(MRS.MRIDULA BHATKAR, J.)