

4. Ms. Sana Hakim, learned Counsel for petitioner, has submitted that on 18/06/2015, despite best intentions, the petitioner's Advocate could not remain present in the Court as he was engaged to conduct an anticipatory bail matter in this Court. On the said date, it was not possible for the petitioner to make any alternative arrangement. Therefore, the orders made on 18/06/2015 as well as on 31/07/2015 are too harsh and disproportionate to the alleged lapse on the part of the petitioner. Ms. Hakim states that if one more opportunity is granted, the petitioner will ensure that the cross-examination is concluded on the date that may be fixed by the Court and no further adjournment will be applied for.

5. Mrs. Seema Sarnaik, learned Counsel for respondent, has submitted that the impugned order is correct, particularly if the manner in which the petitioner has been delaying the proceedings, is taken into consideration. The impugned order itself records that the matter is pending since 2011 and the cross-examination is on since last entire year. The impugned order also records that on most occasions, the cross-examination was deferred at the request of the petitioner and that this is borne out from the roznama. In these circumstances, Mrs. Sarnaik submitted that no further indulgence be granted to the petitioner.

6. Having heard the learned Counsel for parties and perused the record, although, the Family Court is right that the cross-examination has gone on too long and the petitioner is responsible for

such delay, nevertheless, considering the circumstance that petitioner's Advocate did not attend the Court on 18/06/2015 and the petitioner had no knowledge that the Advocate was not going to attend the proceedings on 18/06/2015, the petitioner can be granted additional opportunity subject, of course, to payment of substantial costs. This is because the respondent is in no manner responsible for the events of 18/06/2015, though, the respondent is the one who will suffer the most if the impugned order is set aside. The respondent has been facing cross-examination for almost six sessions throughout the last year. The impugned order notes that the cross-examination had to be deferred on several occasions, at the request of the petitioner. In these circumstances, it is only appropriate that the petitioner pays costs of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent as a condition precedent to continue with and conclude the cross-examination.

7. In the aforesaid circumstances, the impugned orders dated 18/06/2015 and 31/07/2015 are set aside. This is subject to the petitioner paying costs of Rs.10,000/- to the respondent within a period of one week from today. The costs may be paid directly to the respondent by means of a demand draft. Proof of payment to be submitted before the Family Court within a period of one week along with authenticated copy of this order. In case the costs are not paid, this petition shall be deemed to be dismissed.

8. The learned Counsel for parties state that the matter is fixed before the Family Court on 10/10/2015. On this date, the parties will apprise the Family Court of the making of the present order and the Family Court will fix some date not later than 21/10/2015, for record and conclusion of the cross-examination of the respondent by the petitioner. The parties to cooperate in ensuring that the cross-examination of the respondent is concluded on or before 21/10/2015. In particular, the petitioner should not apply for any further indulgence in the matter of cross-examination of the respondent.

7. Rule is made absolute to the aforesaid extent with costs as aforesaid.

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

(M. S. SONAK, J.)