

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11543 OF 2015

Sumeet R. Bhoyte .. Petitioner
vs.
Ms Tejashree J. Jadhav and ors. .. Respondents

Mr. V.S. Kapse i/b Mr. S. R. Ingule for the Petitioner.
Mr. A. Kumar for Respondent No.1.
Mr. D.J. Shejul for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 23 NOVEMBER 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the parties.
- 3] The challenge in this petition is to the order dated 5 September 2015, by which the Petitioner has been deprived opportunity to cross-examine Respondent No.1.
- 4] During pendency of this petition, the Family Court has made yet another order dated 29 October 2015 to the same effect. The said order has not been specifically challenged. However, rather than delay the matter any further, leave is granted to the Petitioner to

challenge the order dated 29 October 2015 as well. Necessary amendment to be carried out forthwith. The order dated 29 October 2015 is a part of the record, since the same has been produced by Respondent No.1.

5] If the record is perused, the Family Court is right in observing that the Petitioner has been unnecessarily delaying the matter. The learned counsel for Respondent No.1 is also right in his submission that the conduct of the Petitioner does not deserve any indulgence in the context of not proceeding with the cross-examination. Nevertheless, it is to be noted that on 29 October 2015, when the Petitioner was offered an opportunity to cross-examine, the Petitioner's lawyer was not present in the Court and it is in this circumstance that the Petitioner expressed his inability to proceed with the cross. Even, when the order dated 5 September 2015 made, there was some difficulty in the matter of presence of the Petitioner's advocate and therefore, the Petitioner could not proceed with cross-examination.

6] The learned counsel for the Petitioner has stated that if yet another opportunity is granted to the Petitioner, the Petitioner will

proceed with the cross-examination without any excuse. The learned counsel for the Petitioner is also left it to the Court to impose such pecuniary terms as this Court may deem appropriate, particularly in the matter of imposition of costs.

7] In the interest of justice, therefore, it would be appropriate if further opportunity of cross-examination is granted to the Petitioner. This shall, however, be subject to the Petitioner paying costs of Rs.25,000/- to Respondent No.1. Such costs to be paid by way of demand draft to Respondent No.1 within a period of two weeks from today. In the alternate, the Petitioner shall be at liberty to deposit the costs before the Family Court and Respondent No.1 shall be at liberty to withdraw the same unconditionally. Subject to payment of such costs, the impugned orders dated 5 September 2015 and 29 October 2015 are set aside.

8] The parties to appear before the Family Court on 27 November 2015 and produce authenticated copy of this order. The Family Court to fix a suitable date for cross-examination of Respondent No.1 beyond 7 December 2015, because if by 7 December 2015, the Petitioner does not deposit the costs, then this petition shall be

deemed to have been dismissed. However, the order with regard to payment of costs of Rs.25000/- shall remain. The Family Court to ensure that such costs are paid by the Petitioner, for this purpose the Family Court shall be at liberty to take out appropriate proceedings for disobedience of the orders.

9] It is made clear that if the Petitioner does not proceed with the cross-examination on the date fixed by the Family Court, the Petitioner shall not be entitled to any further opportunities or indulgences.

10] Rule is made absolute to the aforesaid extent.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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