

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.498 OF 2016

Bhanudas Ramdas Surse.] ... Petitioner

Versus

Kavita Bhanudas Surse.] ... Respondent

Mr. Tushar Sonawane for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- JANUARY 22, 2016

P. C. :-

1. The challenge in this petition is to the order dated 03/08/2015 by which the Family Court at Nashik has dismissed the petitioner's application at Exh.50 seeking recall of Witness No.2 examined by and on behalf of the respondent.

2. The learned Counsel for petitioner submits that detailed reason was set out in the application at Exh.50 as to why such prayer was made. However, he submits that the Family Court has not at all adverted to such reason and dismissed the application at Exh.50 by merely observing that the change of Advocate is not a ground to seek recall of witness. He submitted that this is a fit case where the powers under Section 151 of Code of Civil Procedure ('CPC') ought to have been exercised in the interest of justice.

3. Having perused the impugned order as well as the record, there is no case made out to interfere with the impugned order. The reason set out in the application is that there was miscommunication between the petitioner and his Advocate. Another reason set out is that some documents were produced by the witness and it is necessary to cross-examine the witness upon such documents and also testing credentials of the witness who claims to be a Counselor. At the outset, it is to be noted that full opportunity was granted to the petitioner and his Advocate to proceed with the cross-examination. At that stage, the petitioner and his Counselor proceeded with the cross-examination without even seeking any adjournment for the purpose. Now that the cross-examination is, perhaps, not to the complete liking of the petitioner, the present application at Exh.50 appears to have been made. Provisions under Section 151 of the CPC are not intended to assist any party to fill in the lacunae in their case. Such liberty will not be in the interest of justice. In any case, interest of justice requires consideration being shown to the respondent as well.

4. Therefore, no case is made out to interfere with the impugned order. This petition is dismissed.

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

(M. S. SONAK, J.)