

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.529 OF 2016
(Raosaheb Laxman Gavhane Vs. Mangaltai Raosaheb Gavhane and
another)

Mrs.M.S.Jagtao, Advocate for the petitioner.
Mr.R.B.Temak, Advocate for respondent No.1.
Respondent No.2 served.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/07/2017

PER COURT :

1. The petitioner is aggrieved by the “no cross order” dated 28/09/2015. The petitioner and respondent No.1 are husband and wife *interse* and respondent No.2 is the original defendant No.2.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and respondent No.1. Respondent No.2 though served, has not caused an appearance

3. The petitioner was aware that the original plaintiff has led his oral evidence on 13/01/2015 through an affidavit. After being given more than 6 months of adjournments, the ‘no cross order’ was passed on 21/07/2015. The application for recalling ‘no cross order’

has been filed on 28/09/2015 and the same has been rejected by the impugned order.

4. Learned Advocate for respondent No.1 has strenuously supported the impugned order and submits that the negligence and laxity on the part of the petitioner cannot be countenanced. No sympathy deserves to be shown towards the petitioner. Respondent No.1/wife is litigating against her husband and his brother and they intend to delay the maintenance proceedings only to tire out the wife.

5. It cannot be ignored that if an opportunity to cross-examine the plaintiff is not granted, her evidence would practically remain unchallenged. Though negligence and laxity is apparent on the part of the petitioner, the delay caused cannot be said to be inordinate.

6. Considering the above, this petition is partly allowed. The impugned order dated 28/09/2015 is quashed and set aside and by allowing the application, the petitioner/defendant No.1 is permitted to cross examine the plaintiff on the first approaching date which is 29/07/2017, on payment of costs. Defendant No.1 shall not seek an adjournment and if he fails to cross-examine the plaintiff on the said date, he shall lose his right to cross-examination and thereafter the

plaintiff shall not be recalled for cross-examination.

7. Needless to state, to reduce the hardships of the plaintiff, who is a female member of the family and is in litigation, the petitioner shall pay an amount of Rs.10,000/- (Rs.Ten thousand only) to the plaintiff by depositing the said amount before the Trial Court on or before 29/07/2017, failing which he shall lose the right to cross examine the plaintiff. After the amount is deposited, the plaintiff shall withdraw the said amount without conditions.

(Ravindra V.Ghuge, J.)