

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12422 OF 2016

SHITAL KRUSHNA DAKE
VERSUS
KRUSHNA DAGDU DAKE

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Advocate for Petitioner : Shri Kulkarni Suvidh S.
Advocate for Respondent : Shri Narwade Narayan B.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 03, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 18.11.2016, by which, the “No Cross Examination” order dated 5.7.2016 is not recalled and her application Exhibit 36 has been rejected.

2. I have considered the submissions of the learned Advocates for respective sides. Shri Narwade prays for the dismissal of this petition, with costs.

3. HMP No. 13 of 2013 was filed by the respondent / husband at Newasa on 25.2.2013 under Section 9 seeking restitution of his conjugal rights. On 23.9.2013, the Court passed “No Written Statement” order. On 27.11.2013, which is within

nine months of the institution of the proceedings, HMP No.13 of 2013 has been allowed ex-parte.

4. The petitioner / wife moved Civil Misc. Application No.6 of 2014 on 11.6.2014, praying for setting aside the ex-parte judgment as well as for condonation of delay of 166 days. The petitioner led evidence on 14.10.2015 and was cross-examined on 15.2.2016. Thereafter, the respondent / husband led evidence on 26.4.2016. As the petitioner failed to cross-examine him, "No Cross Examination" order was passed on 5.7.2016.

5. The petitioner preferred application Exhibit 36 on 13.9.2016, praying for revoking the "No Cross examination" order. Shri Narwade strenuously submits that the word used in the Marathi application - Exhibit 36 will mean a "review application" and not an application to recall an order. A review application is not maintainable. So also, a wrong date of the order is mentioned in Exhibit 36. Hence, he prays that since the review application was untenable in law, Exhibit 36 deserves to be rejected.

6. It cannot be disputed that in mofussil areas, some times, the words mentioned in the applications may actually have a

different meaning. The entire contents of Exhibit 36 indicate that the petitioner wanted the trial Court to recall the “No Cross” order and permit her to cross examination the respondent. Her Advocate has used the word in Marathi, which would mean review in English. I am of the view that such technical objections need to be ignored in such situations.

7. It cannot be disputed that the petitioner has to travel from Jalna district to Newasa in the pending proceedings. She is dependent upon her father and is said to be receiving maintenance amount. If the “No-cross” order is not recalled, the petitioner would lose an opportunity of cross-examining the respondent. She has already suffered an ex-parte judgment in the petition filed by the respondent at Newasa and is suffering hardships even today.

8. Considering the hardships and the fact that the petitioner has to travel to Newasa for conducting this litigation, the trial Court, in order to meet the ends of justice, should have taken a pragmatic view instead of a pedantic view.

9. Considering the above, this petition is partly allowed. The impugned order dated 11.11.2016 is set aside. The “No Cross

Examination” order dated 13.9.2016 is set aside. Application Exhibit 36 is allowed, subject to costs of Rs.1,000/- (Rs. One Thousand only/-). The respondent while paying the maintenance amount for the month of July, 2017 shall pay Rs.1,000/- (Rs. One Thousand only/-), less as it would stand adjusted towards the costs that the petitioner has to pay to him.

10. Subject to the Misc. Application No. 257 of 2016, filed by the petitioner before this Court, praying for transfer of the proceedings at issue to the Jalna Court, for the present, the petitioner and the respondent agree to remain present before the Court at Newasa on 21.7.2017. The petitioner shall cross-examine the respondent on the said date and shall not seek an adjournment.

11. Needless to state, this would be subject to the pending proceedings of the petitioner for seeking transfer of the proceedings to Jalna.

(RAVINDRA V. GHUGE, J.)

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