

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11273 OF 2016

Deepak H. Lakum ... **Petitioner.**

V/s.

Mrs. Hemal D. Lakum ... **Respondent.**

- Mr.Pradeep J. Thorat for the Petitioner.
- None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 4th OCTOBER, 2017.

P.C. :-

1] Heard learned counsel for the Petitioner.

2] This petition is preferred challenging 3 consequential orders passed by the Family Court, Mumbai in Marriage Petition No.A-1595 of 2011. The main grievance of the Petitioner is against the order passed by the trial Court on 16/09/2016 thereby rejecting his application for his recall. The recall was sought only to give clarification as to the answer given by the Petitioner in his cross-

examination to the question, “if the Respondent is ready and willing to cohabit with him, then whether he was ready to take her back?” and he has answered that question in affirmative. According to learned counsel for the Petitioner, as the petition is for divorce on the ground of cruelty, this answer might come in the way of the Petitioner, therefore the Petitioner wanted to give clarification and for that purpose the Petitioner filed application for his re-examination. The said application is rejected by the trial Court by making certain observations. Learned counsel for the Petitioner concedes that, if the trial Court ultimately decides the petition for divorce, uninfluenced by these observations, Petitioner has no grievance against the said order. Ordered accordingly.

3] The next grievance is against the order dated 19th September, 2016 whereby the evidence of the Petitioner is ordered to be closed on the ground that the Petitioner has failed to examine further witnesses. On this score, learned counsel for the Petitioner submits that despite the various applications filed by the Petitioner that it was not possible to conduct the hearing of the case on day today basis, the trial Court insisted to do so and as a result, the Petitioner's mother, who was out of station, could not be examined

and even for the issuance of witness summons the Petitioner was not given sufficient time to produce the witnesses.

4] Considering that this matter is pending on account of the interim stay granted by this Court since last about one year, in my considered opinion, the interest of justice would be served substantially, if the Petitioner is given an opportunity to produce his witnesses and lead the evidence by setting aside the impugned order. Learned counsel for the Petitioner fairly concedes that now the matter is posted before the trial Court on 21st November, 2017 and on that day he will keep the Petitioner's mother and one witness, namely Jaysingbhai Padiya, present; and the Petitioner may be permitted to examine some additional witnesses if necessary. Hence, on the assurance given by learned counsel for the Petitioner that the Petitioner's mother and one witness shall remain present on 21st November, 2017 and the matter will be proceeded diligently and expeditiously, the impugned order passed by the trial Court closing the evidence of the Petitioner stands set-aside.

5] At the same time, the order passed by the trial Court for conducting the matter on day-today basis is also set-aside as some times it may not be possible on account of unavoidable

circumstances and in such situation again the evidence of the Petitioner need not stand closed; however, it is subject to condition that the Petitioner will cooperate in expeditious hearing of the case so that the trial Court is in position to complete and dispose of the case within six months from 21st November, 2017.

6] Writ Petition stands disposed of in above terms.

(DR. SHALINI PHANSALKAR-JOSHI, J.)