

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.583 OF 2016

Sou Aarti Abhuijeet Choudhary .. Petitioner
-Versus-
Abhijeet Chandrakant Choudhary ..Respondent

Mr. Amitkukar Sale for petitioner
Mr. U.R.Mankapure for respondent.

CORAM : MR. M.S.KARNIK, J.

DATE : 30th January 2017.

P.C.

1] The petitioner has filed this petition challenging the order passed below Exh.24 dated 8th October 15 whereby her application for setting aside the “No Cross” order has been rejected. An application has been filed by the respondent – husband for grant of interim custody of the minor son Amod under section 25 of the Guardian and Wards Act read with Hindu Minority Guardians and Wards Act, 1956. During the pendency of the application, the petitioner wife did not remain present for cross examination of the husband and hence “No Cross” order came to be passed by the learned trial Court. An application was filed for setting aside this “No Cross” order. However, the same came to be dismissed in default by an order dated 8th October 2015. on 23rd November 2015, an

order was passed by the trial court that the case is for evidence of respondent wife, who is absent and hence, the evidence of respondent wife is closed.

2] During the pendency of this petition, this Court by an order dated 1st February 2016 had made some interim arrangement regarding custody of Amod. Learned Counsel for the respondent husband submits that the petitioner wife has breached the order dated 1st February 2016 and hence, he has filed appropriate proceedings before the learned trial court for breach of the order dated 1st February 2016. The learned Counsel for the petitioner, however, disputes this position. The learned trial court to consider the application made by the respondent – husband for the breach of order dated 1st February 2016 on its own merits.

3] Learned Counsel for the respondent, Mr. Mankapure, in all fairness submits that he has no objection if the petitioner -wife is given reasonable opportunity of representing her own case before the learned trial court. He, however, submits that the respondent wife is adopting dilatory tactics and she should be put to strict terms, as he is not objecting to setting aside “No Cross” order and the consequent order under which the trial court has closed the evidence of the respondent.

4] The learned Counsel for the petitioner wife on instructions from the petitioner who is present in court submits that in view of the concession given by the learned Counsel for the respondent – husband, the interim order made by this court on 1st February 2016 be continued till disposal of the application before the trial court.

5] In this view of the matter and the stand taken by the learned Counsel for the respective parties, the petition is allowed in terms of prayer clauses (a) and (b). It is, however, made clear that the petitioner wife will not seek unnecessary adjournments before the trial court. The learned trial judge shall grant an opportunity to the petitioner to cross examine the respondent -husband and to lead her evidence and the application before the trial court may proceed from that stage. Learned trial Judge to hear and decide the application as expeditiously as possible and in any event within a period of six months from 6th February 2017. Learned Counsel for the respective parties undertake to remain present before the trial Judge on 6th February 2017 with a request to take the application on board and decide the same. They also undertake to produce authenticated copy of this order before the learned trial Judge.

6] It is made clear that I have not expressed any opinion on the merits of the matter and the learned trial Judge may proceed with the application

on its own merits without being influenced by either this order or the interim arrangement dated 1st February 2016, which shall only continue till disposal of the application. Paragraph (1) of the order dated 1st February 2016 is modified to read as under:-

“The petitioner is directed to give to the respondent access to Amod on every Sunday starting from 5th February 2017 between 9.30 am and 2.30 p.m.”

Rest of the paragraph and the order shall remain the same. It is made clear that the application filed by the respondent husband for breach of order dated 1st February 2016 shall be dealt with on its own merits and in accordance with law.

7] Petition is disposed of in the aforesaid terms. No costs.

(M.S.KARNIK, J)