

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 382 of 2018**

- Smt. Mamta Kayarkar W/o Shri Dipak Kayarkar Aged About 36 Years D/o Shri Ganga Prasad Vishwakarma , R/o Plot No. 4 Surya Vihar Colony, Triveni Nagar (East) Near Apollo Hospital Bhilai Tahsil And District Durg

---- Petitioner**Versus**

- Dipak Kayarkar S/o Late Shankar Narayan Aged About 39 Years R/o Shastri Chowk Tulsipur Ward No. 18 Rajnandgaon Tahsil And District Rajnandgaon Chhattisgarh

---- Respondent

For Petitioner : Shri Vivek Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****30/04/2018**

1. Heard.
2. The present petition is against the order dated 23.04.2018, whereby right to cross-examine the respondent/husband in divorce case was closed.
3. Learned counsel for the petitioner submits that the evidence by way of an affidavit was filed on 16.04.2018, thereafter, the case was fixed for 20.04.2018, on that date a cost of Rs.2000/- was imposed. Subsequently, the case was fixed for 23.04.2018 and on that date since the Advocate could not appear on behalf of the petitioner, the right to cross-examine was closed on the ground that the cost has not been paid.
4. Perused the order-sheets filed along with the petition. Order-sheet would show that on 24.03.2018 on a petition filed by the husband/respondent

under Section 13 (1) (1 – A) of the Hindu Marriage Act, the Court proceeded ex-parte. Subsequently, the ex-parte order was set aside on 16.04.2018 and the case was fixed for cross-examination of the witnesses on 16.04.2018. On that date itself, the evidence by way of affidavit was placed before the Court by the Husband/respondent and on 20.04.2018 but the counsel for the petitioner was not present, as such the cost of Rs.2000/- was imposed. The order-sheet would show that on 22.09.2017, the written statement was filed on which the issues were framed. Subsequently, on 24.03.2018 the Court proceeded exparte against the petitioner and the case was fixed for ex-parte evidence. Thereafter, on 06.04.2018, the Court was on leave. On 07.04.2018 the reply of application under Order 9 Rule 7 CPC was filed and thereafter on 16.04.2018 the ex-parte proceeding was set aside and on that date itself the affidavit was filed under Order 18 Rule 4 CPC by the husband/respondent and the case was fixed for cross-examination of the plaintiff i.e. the husband and other witnesses on 20.04.2018. Subsequently, on 23.04.2018 right to cross-examine was closed on the ground that the cost has not been paid.

5. Perusal of the record would show that one *Shok Patra* has been filed on record, which has been said to be the *Shok Patra* of the brother of the counsel of petitioner as his last ritual ceremony was fixed on 24.04.2018. Over all taking the case and the order-sheets, it reveals that the case was put to enormous fast track, which resulted into closure of the right to cross-examine and lead evidence of the defendant/wife i.e. the petitioner herein. Considering the facts of this case, as the brother of the advocate appears to have died, it prima faice reflects genuine reason existed for non appearance of the advocate, who is said to been imparted with the instructions for cross-examine the witness. Under the circumstances, the order dated 23.04.2018

is set aside. The case is reverted back to the *de novo* stage as was on 20.04.2018. The trial Court shall proceed accordingly thereafter.

6. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri

Judge

Ashu