

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.10848 OF 2018

Pranav Mahendrakumar Salvi	]	Petitioner
Vs.		
Komal Pranav Salvi	]	Respondent

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Ms. T.F. Irani, for Petitioner.
Ms. G.Z. Khan, for Respondent.

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CORAM : R.G. KETKAR, J.
DATE : 4th October, 2018.

P.C:

Heard Ms. Irani, learned Counsel for the petitioner and Ms. Khan, learned Counsel for the respondent at length.

2. This Petition filed under Article 227 of the Constitution of India, takes exception to the order dated 23rd August, 2018 passed by the learned Judge, Family Court-4 at Bandra, Mumbai below Exhibit 135 in Petition No. A-322 of 2014. By that order, the learned Judge rejected the application made by the petitioner herein for adjournment.

3. Rule. Ms. Khan waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

4. In support of this Petition, Ms. Irani submitted that the petitioner is represented by Ms. Helen Miranda, Advocate. Because of medical reasons, Ms. Miranda was on leave. In view thereof, she

conducted cross-examination of the respondent herein. After conducting the cross-examination for some time, the application Exhibit 135 was filed on 23rd August, 2018 on the ground that Ms. Irani is not well versant with the matter and she has conducted the cross based on the questions prepared by Ms. Miranda, Advocate. The reference was made to Divorce Petition filed by the petitioner in the Family Court and it was submitted that it would be incumbent if both the matters are simultaneously taken up in the interest of justice. The petitioner prayed for adjournment for further cross-examination of the respondent.

5. The respondent filed reply on the same day, inter alia, contending that affidavit of examination-in-chief of the respondent was filed on 24th August, 2017. By order dated 9th June, 2016 below Exhibit 59, defence of the petitioner herein was struck off. On 21st July, 2018, the learned Judge directed the Counsel appearing for the petitioner herein to conduct cross-examination of the respondent. On 23rd August, 2018, the learned Counsel for the petitioner had put up approximately 80 questions to the respondent. It was further contended that Divorce Petition instituted by the petitioner herein was filed later in point of time and, therefore, the Petition filed by the respondent for restitution of conjugal rights needs to be decided first. The respondent, therefore, prayed for closer of cross-examination and rejection of the application for adjournment. By the impugned order, the learned Judge rejected the application.

6. Ms. Irani submits that the matter is kept tomorrow i.e on 5th October, 2018 before the Family Court and assures that the petitioner herein will proceed to cross-examine the respondent on the date/s fixed by the Family Court and will not seek undue adjournment.

7. Ms. Khan submits that if the Court is inclined to permit the petitioner herein to cross-examine the respondent, it may be clarified that in case the petitioner fails to cross-examine the respondent on the date/s fixed by the Family Court, 'no further cross order' will be passed against the petitioner herein.

8. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the petitioner has filed Affidavit of examination-in-chief on 24th August, 2017 and the matter was fixed for her cross-examination on 21st July, 2018. On 21st July, 2018, the matter was adjourned to 13th August, 2018. On 13th August, 2018, application was made on the ground that the petitioner's Advocate is unable to conduct the cross as she was in a time bound matter before the Court Commissioner. On 13th August, 2018, the learned Judge granted adjournment as a last chance and kept the matter on 23rd August, 2018. On 23rd August, 2018, application Exhibit 135 was filed. Ms. Khan submitted that reason given in the application at Exhibit 135 and the reason given in the application Exhibit 132 are totally different. Even if, I accept this submission, the fact remains that the matter was fixed on 21st July, 2018 for cross-examination of the respondent and thereafter, it was adjourned to 13th August, 2018. On 13th August, 2018, as and by way of last chance, it was adjourned to 23rd August, 2018. In my opinion, instead of rejecting the application for adjournment, the Family Court could have imposed costs on the petitioner herein for prolonging the matter. By declining to grant adjournment, the learned Judge has closed cross-examination of the respondent by the petitioner herein. Having regard to the fact that the defence of the petitioner is already struck out, the petitioner herein cannot lead evidence. At the highest, the petitioner

can cross-examine the respondent. If that right is also taken away, virtually there will be no contest to the Petition for restitution of conjugal rights.

9. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside by imposing conditions. Hence, the following order:

- [1] The impugned order is set aside.
- [2] The parties agree that they will appear before the Family Court on the next date of hearing i.e on 5th October, 2018. Ms. Khan assures that she will ensure presence of the respondent in the Family Court tomorrow. The petitioner herein will proceed to cross-examine the respondent.
- [3] The petitioner shall cross-examine the respondent on the date/s so fixed by the Judge and will not seek adjournment. It is made clear that in case, the petitioner herein fails to cross-examine the respondent on the date/s fixed by the Family Court, 'no cross order' will be passed against the petitioner.
- [4] Rule is made absolute in the aforesaid terms.
- [5] In so far as prayer clause (c) is concerned, liberty is reserved to the petitioner herein to make application before the Family Court.
- [6] All contentions of the respondent in that regard are expressly kept open.

[R.G. KETKAR, J.]