

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4967 OF 2018

Pallavi Kiran Kulal

.....Petitioner

V/s.

Kiran P. Kulal

.....Respondent

APPEARANCES :

Mr. Satish S. Raut, Advocate for the petitioner.

Mr. Yashavita Apte i/by. Mr. Harshwardhan Salgaonkar,
Advocate for respondent no.1.**CORAM : SANDEEP K. SHINDE, J.****Friday, 28th June, 2019.****P.C. :**

1. Heard learned Counsel for the parties.
2. Petitioner is the respondent in Marriage
Petition No. 134 of 2015 pending on the file of Civil Judge
Senior Division, Ratnagiri. His right to cross-examine

witness and lead the evidence has been forfeited on account of his default. Petitioner-respondent thus, requested to set aside the order, however, learned Court rejected his request vide order dated 16th March, 2018.

3. Aggrieved by this order, this petition is preferred under Article 227 of the Constitution of India. The petitioner is a respondent in Marriage Petition No. 134 of 2015 instituted by the applicant for dissolution of marriage. Learned Counsel submits that, petitioner could not remain present, in the trial Court, on the scheduled date, to cross-examine the witness, for the reason beyond her control; her absence was not deliberate nor intentional. He submits, order forfeiting right to lead evidence, is harsh and thus petitioner (original respondent) may be permitted to cross-examine witness and lead the evidence.

4. Considering the nature of proceedings, being instituted by husband against wife, the order forfeiting the right of the petitioner to lead evidence would lead to far reaching effect and thus to ensure 'fair trial', application filed by the petitioner below Exhibit-40 in Marriage Petition No. 134 of 2015 is allowed.

5. In the result, the order dated 16th March, 2018 passed below Exhibit-40 by the Civil Judge Senior Division, Ratnagiri in Marriage Petition No. 134 of 2015 is quashed and set aside. The petition is allowed in aforesaid terms and disposed of accordingly.

(SANDEEP K. SHINDE, J.)