

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2857 OF 2019

Ms.Nishant Vinod Seth @ Nishant Nassiruddin Sheikh ..Petitioner.
V/s.

Mrs.Shashi w/d. Late Ramkishore Seth ..Respondent.

Ms.Pallavi Zaveri for the petitioner.

Mr.Manish Rai for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 9, 2019

ORAL JUDGMENT

Heard Ms.Zaveri, learned counsel for the petitioner and
Mr.Rai, learned counsel for the respondent.

2. On March 15, 2019, this Court made the following order :-

“ Heard Mr.Pallavi Zaveri, learned counsel for the petitioner.
She states that private notice has been effected upon the
respondents, however, the respondent is not present.

2. Accordingly, issue notice to respondent, returnable on April 9,
2019. Notice to indicate that endeavour shall be made to disposed
of this petition finally at the stage of admission.

3. In addition to the usual mode of service, the petitioner is
permitted to effect private service upon the respondent and file

affidavit of service.

4. *The petitioner to deposit an amount of Rs.10,000/- towards security of costs before learned trial Judge on or before the next date i.e. April 9, 2019.”*

3. Ms.Zaveri, learned counsel for the petitioner states that in pursuant to the aforesaid order, amount of Rs.10,000/- towards security of costs has already been deposited before the learned trial Judge.

4. Challenge in this petition is to the orders dated February 5, 2018 and January 21, 2019 by which 'No cross order' came to made against the petitioner thereby disabling the petitioner from cross-examining the respondent.

5. The petitioner, in her application seeking recall of the two orders 'no cross and requesting the respondent's recall to face cross-examination' has pleaded that she resides along with her son at Bangalore. It is pleaded that she was monitoring the case by relying upon the website of the Court. She has pointed out that on February 5, 2018, the website indicated that the matter was adjourned to March 28, 2018. She pointed out that she and her advocate did not attend on the said date. She pointed out that on the later date when she attended the Court, she realised that an order disabling her cross-examination the respondent was passed. Therefore, she took out the proceedings for recall of the said orders.

6. Ms.Zaveri points out that the suit has been instituted by the respondent, who is the mother-in-law of the petitioner, in respect of the property which, according to the petitioner belongs to her deceased husband.

7. Mr.Rai, learned counsel for the defendant points out that the respondent is 88 years of age. He point out that sufficient opportunities were afforded to the petitioner and her advocate, who for some or other reason remained absent. As a result, the suit is unnecessarily delayed. He submits that taking into consideration all these facts, the impugned order was made and the same warrants no interference. He, therefore, submits that this petition may be dismissed.

8. According to me, the explanation submitted by the petitioner does not appear to be malafide. Therefore, atleast one further opportunity is required to be granted to the petitioner, however, subject to payment of costs of Rs.10,000/- to the respondent. Besides, it is required to be made clear that the petitioner should diligently pursue the matter and not seek any unnecessary adjournment and even as respondent is 88 years of age.

9. Accordingly, the impugned orders are set aside. The petitioner is granted liberty to cross-examine the respondent, who will have to be recalled for facing the said cross-examination.

10. The matter is now fixed before the learned trial Judge on

April 23, 2019. Learned counsel for the respondent will remain present in the Court. Learned counsel for the respondent states that the cross-examination will start on the same date without seeking any adjournment.

11. Learned trial Judge is requested to give priority to recording of the cross-examination of respondent since she is a senior citizen and as far as possible try to complete the cross-examination on the same date or at the highest granted another short date during which the cross-examination can be completed.

12. Learned counsel for the parties state that they will co-operate with the learned trial Judge in completing the evidence in the matter as expeditiously as possible.

13. The respondent is granted unconditional liberty to withdraw the amount of Rs.10,000/- deposited by the petitioner before the trial Court.

14. Learned trial Judge is directed to dispose of the suit itself as expeditiously as possible on its own merits and in accordance with law.

15. Rule is made absolute in the aforesaid terms.

16. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)