

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 14533 OF 2018**

Dhanashree Devendra Thakur	]	Petitioner
Vs.		
Devendra Parshuram Thakur	]	Respondent

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Ms. Sucheta D. Ghaisas i/b Indrajeet Kulkarni, for Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 11TH JANUARY, 2019.

P.C:

Not on board. At the request of Ms. Ghaisas, taken up in the production board.

2. Heard Ms. Ghaisas, learned Counsel for the petitioner at length.
3. This Petition takes exception to the order dated 26th November, 2018 passed by the learned 9th Joint Civil Judge, Senior Division, Thane below Exhibit 117 in M.P. No.50 of 2012. By that order, the learned trial Judge rejected the application made by the petitioner, who is respondent in the Marriage Petition for recalling the respondent, herein, who is petitioner in that Marriage Petition for cross-examination.
4. In support of this Petition, Ms. Ghaisas submitted that the respondent filed Affidavit of evidence on 9th January, 2013. The respondent was under cross-examination since 2017. Due to absence of the petitioner and

her Advocate, 'no cross order' was passed on 12th February, 2018. The Court thereafter gave permission to take further cross-examination of the respondent. The cross was concluded on 10th September, 2018. She submitted that on account of 'Bharat Band', the petitioner herein could not attend the proceeding in the trial Court. However, her Advocate was present for cross-examination of the respondent. As the petitioner was not present on that date, she could not assist her Advocate for conducting the cross-examination. She submitted that on 1st October, 2018, present application was filed for recalling the respondent for cross-examination. By the impugned order, the learned trial Judge rejected the application. She submitted that no prejudice will be caused to the respondent in case application is allowed. She, therefore, submitted that the Petition requires consideration.

5. I have considered submissions advanced by Ms. Ghaisas. I have also perused the material on record. A perusal of application Exhibit 117 shows that only reason given for recalling the respondent for cross-examination is that some of the important points were remained to be asked in the cross-examination of the respondent. Hence, it is necessary to recall the respondent for cross-examination. Entire application is silent about absence of the petitioner herein. Contention about 'Bharat Band' is agitated for the first time in this Court.

6. In paragraph 6, the learned trial Judge referred to the reason given for recalling the respondent for cross-examination and observed that the reason for not asking question is not mentioned in the application. There must be a sufficient reason to recall the witness. Merely, it is set out that some important questions are not asked to the respondent. What were those questions or on what factual aspects, the respondent wants to cross-examine the respondent is not mentioned in the application. In paragraph 7, it was

observed that the witness can be recalled on application by party, where there has to be specific reason to recall the witness.

7. For the reasons recorded in paragraphs 6 and 7 of the impugned order and also after perusing the application Exhibit 117, I do not find that the learned trial Judge has committed any error. Hence, the Petition fails and the same is dismissed.

8. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]