

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.320 OF 2019

Sanjay s/o Basudeo Bose

... Petitioner

-vs-

Jayshree w/o Sanjay Bose

... Respondent.

Shri P. S. Wathore, Advocate for petitioner.

Shri A. Shelat, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : April 10, 2019

P.C.

The petitioner is aggrieved by the order passed below Exhibit-71 whereby the trial Court has rejected the said application as filed under provisions of Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for recalling of witness.

The petitioner herein has filed proceedings for grant of divorce against the respondent. During the course of evidence witness summons were issued to three doctors who were thereafter examined before the trial Court. The petitioner thereafter filed application below Exhibit-71 stating therein that when the said witnesses were examined the petitioner's counsel was not present and the petitioner was called upon to examine the said doctors. Though the said doctors wanted to show some medical records, the Court did not permit the same to be done. Hence the medical papers in their custody

could not be placed on record. It was further stated in the application that some documents were placed on record at Exhibit-34 pertaining to the health of the respondent and the witnesses were required to be recalled for their examination along with case papers of the respondent. This application was opposed by the respondent stating therein that it was not necessary to recall the witnesses already examined. The trial Court observed that when the witness summons were issued the witnesses were not called upon to carry the medical reports with them. However, the petitioner was not prevented from referring to any documents on record. On that count the application came to be rejected.

3. Shri P. S. Wathore, learned counsel for the petitioner by referring to the evidence of the witnesses examined earlier submitted that it was necessary to recall those witnesses to enable them to explain the documentary material on record. It was also necessary to produce the medical reports in relation to the treatment of the respondent and as that aspect was not permitted when the said doctors were examined, they were liable to be recalled. He placed reliance on the decisions in *K. K. Velusamy vs. N. Palanisamy (2011) 11 SCC 275* and *Satinder Singh vs. Sukhdev AIR 1999 HP 72*. According to him the trial Court erred in not allowing the application in question.

4. Shri A. Shelat, learned counsel for the respondent supported the impugned order. According to him the witnesses were duly examined and at that stage it was open for the petitioner to confront them with the documents that were already on record. The same was however not done when the petitioner on his own examined the said witnesses and it was not correct to state that he was compelled to do so by the Court. In absence of any reason being assigned for recalling those witnesses, the application was rightly rejected. He referred to the decision in *Smt. M. M. Amonkar and ors. vs. Dr S. A. Johari (1984) 2 SCC 354* and submitted that no interference was called for.

5. Heard the learned counsel for the parties and perused the material on record. Pursuant to the application moved by the petitioner, three doctors were examined at Exhibits-62, 70 and 68. Perusal of their depositions indicate that they were examined by the petitioner himself. The documents that were already on record along with list at Exhibit-34 were not put to those witnesses though they related to the treatment undertaken by the respondent. The trial Court has observed in paragraph 6 of the order that the petitioner was not prevented from placing any documents on record when the said witnesses were examined. It was further observed in paragraph 5 that in case the petitioner wanted any medical documents on

record it was open for him to seek witness summons for production of those documents. In the light of the deposition of said witnesses and the evidence conducted by the petitioner himself wherein no reference is made to the documents already on record, it is found that the trial Court has rightly exercised discretion while rejecting the application in question. The decisions relied upon by the learned counsel for the parties indicate that it is within the discretion of the Court to recall a witness. In the present case there is no exceptional ground made out to recall the witnesses already examined. In the light of observations made by the trial Court in paragraph 5 of the impugned order and in the absence of any jurisdictional error, I am not inclined to interfere in writ jurisdiction.

The Writ Petition is therefore dismissed with no order as to costs.

JUDGE