

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4575 OF 2017

(SAU. BEBI SHALIK MESHARAM & ANR..VS.. SHALIK RAMDAS MESHARAM)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.A.Ansari, Advocate for Petitioners.

CORAM : Z.A.HAQ, J.

DATED : JULY 03, 2019.

None appears for the respondent, though served.

The respondent No.2 has filed civil suit against the present petitioner seeking decree for declaration that he is not father of petitioner No.2-Ku. Nirasha and respondent No.2 has further prayed for decree for injunction restraining the present petitioner from using the name of the respondent in any documents. The trial progressed and after the examination-in-chief of the respondent came to be recorded, the petitioners failed to cross-examine him. Hence, the trial Court passed an order directing that civil suit to proceed without cross-examination of the plaintiff by the defendants. Subsequently, the defendants filed application (Exh.27) seeking permission to cross-examine the plaintiff on the same day on which the application was filed. However, the learned trial Judge dismissed the application adopting a pedantic view.

On going through the impugned order, I find that the conduct of the present petitioner/defendant was not proper and the learned trial Judge has rightly observed that they acted in calculated manner to harass the plaintiff.

However, looking to the nature of controversy and as the petitioners/defendants have undertaken before this Court that they will not seek any adjournment henceforth and cross-examine the plaintiff and his witnesses on the dates as fixed by the trial Court, an opportunity is given to the petitioners/defendants, as prayed.

Hence, the following order:

- i) The impugned order is set aside.
- ii) Accepting the undertaking given on behalf of the petitioners/ defendants that they will cross-examine the plaintiff and his witnesses on the date/ dates as fixed by the trial Court, they are permitted to cross-examine the plaintiff and his witnesses.
- iii) If the defendants fail to cross-examine the plaintiff and /or his witnesses on the date/ dates fixed by the trial Court, the trial Court shall proceed further without granting any adjournment to the defendants for cross-examination of those witness/witnesses.

The writ petition is disposed in the above terms.
In the circumstances, the parties to bear their own costs.

JUDGE