

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL WRIT PETITION 1847 OF 2019

Shaikh Fazal Mehmood,
Age 35 years, Occupation Service,
R/o : Prakash Nagar, behind Ram
Mandir, Tq. Dist. Latur.

**...Petitioner.
(Orig.Respondent)**

VERSUS

1) Sonal Fazal Shaikh,
Age 26 years, Occupation Household,
R/o : Vyankatesh Nagar, Ambajogai
Road, Tq. Dist. Latur.

2) Nazmin Fazal Shaikh,
Age 07 years, Occupation Student,
R/o : As above. (Minor)
(Respondent No.1 is the Guardian)

**...Respondents.
(Orig.Applicants)**

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Advocate for Petitioner : Mr. A. S. Radikar.

Advocate for Respondents : Mr. R. P. Adgaonkar.

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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-01-2020.**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.

2. Present petition has been filed by the original opponent husband for getting the order dated 14-03-2019 and 15-10-2019, passed by learned Judge of the Family Court, Latur in E-Petition No.33 of 2018 below Exhibit 24 and 28 set aside.

3. The factual matrix leading to the present petition are that :

The present respondents have filed the said petition for getting maintenance under Section 125 of the Code of Criminal Procedure. The original applicant has filed affidavit-in-chief on 15-10-2018, and thereafter, it appears that the matter was for cross-examination. On 11-02-2019 as the respondent and his advocate were absent, the order of 'no-cross' was passed. On the same day, application was filed by the respondents stating that, an opportunity should be given to cross-examine the witness of the applicant. That application came to be rejected on 14-03-2019 though on behalf of the applicant it was submitted that, appropriate orders be passed. Thereafter again on 19-03-2019 an application for adjournment was filed on behalf of the respondent that, he want to challenge that order earlier passed, and therefore, time of one month be granted. Say of the applicant was taken, and after hearing both sides, the application was rejected on 19-03-2019.

4. It appears that, once again at Exhibit 28 on 29-03-2019 an application was filed for setting aside no-cross order. Say was taken and by order dated 15-10-2019, the said application has been rejected by the learned Judge of the Family Court, Latur. Hence, this petition.

5. Heard learned Advocate Mr. A. S. Radikar for petitioner and learned Advocate Mr. R. P. Adgaonkar for respondents. In order to cut short it is stated that, both of them have submitted their arguments in support of their respective contentions.

6. It appears from the copy of the Roznama that has been produced that, initially though the present petitioner was served, he remained absent, and the matter was directed to proceed ex-parte. On 15-10-2018 the affidavit on behalf of the applicant was filed and it will not be out of place to mention here that, it was under the ex-parte hearing. Thereafter it appears that, on the adjourned date i.e. on 22-10-2018, the present petitioner appeared with advocate and filed an application for setting aside the ex-parte order. That order was set aside by imposing cost of Rs.2000/- on 14-11-2018. On 04-12-2018 application for adjournment was filed on behalf of the husband present petitioner, it was allowed subject to deposit of cost. Thereafter it appears that on 11-12-2018, as the predecessor was not present, the matter was adjourned. On 27-12-2018 the cost amount was paid to the wife and then the written statement filed by the respondent was taken on record. On 16-01-2019 the parties were absent but the advocates were present, and therefore, on the oral request of the advocate for applicant, the matter was adjourned. On 23-01-2019 there was oral request on behalf of the

advocate that the matter be referred to the mediator, but on that day the parties were absent. It appears that, the talks about mediation did not proceed and on 11-02-2019 as aforesaid, as the husband was absent, in the morning session when the no order of cross was passed, but then in afternoon session he appeared and filed the said application. On 16-02-2019 both the parties appeared and expressed their willingness to settle the matter. It was directed that the daughter be brought in the children complex and then the matter was adjourned.

7. On 07-03-2019 it appears that, some order was passed below Exhibit 01 which has been reproduced by the learned Judge while passing order dated 15-10-2019, and it appears that, it was regarding the conduct of the husband. It was specifically stated that, the approach of the respondent is not fair and he is not co-operating the Court for the efforts of settlement. He is intending to frustrate the petitioner, and therefore, his conduct was recorded. Then the order was passed on 14-03-2019 and the application Exhibit 24 was rejected. Then the matter was kept for the evidence on behalf of the respondent. On 19-03-2019 application Exhibit 27 was filed seeking one month time and then that application has been rejected. The matter was then kept for final arguments. On 29-03-2019 once again the application Exhibit 28 was filed for setting aside

the no-cross order. It also appears that, on the same day the respondent was directed to search Child Psychologist. Thereafter, the matter was adjourned on one or the other ground and then on 15-10-2019 the application Exhibit 28 has been rejected.

8. All these facts are required to be stated for the conduct of the present petitioner. Though it appears that, he was ready to conduct the cross-examination on 11-02-2019, he has taken his own time later on. The conduct prior to that date, when the order was passed, is also required to be noted. At this stage, it will not be appropriate to draw a conclusion regarding the intention of the petitioner in taking time as it may reflect, and when the documents are clear, the further inference is required to be left to be drawn by the appropriate Court at the appropriate stage.

9. From the submissions made on behalf of the petitioner it appears that, the petitioner has objection for keeping short dates in the matter. It is not appropriate. When parties seek justice and if the Court is willing to take their matter as per the convenience of the Court then the convenience of the Court is important than the convenience of the parties. Only on the point that the short adjournments are granted, no relief can be given to the petitioner.

10. Petitioner was ready to conduct the cross-examination on 11-

02-2019, but it appears that it was not taken on that day. The application came to be rejected on 14-03-2019. In fact, Judge of the Family Court ought to have considered that, at the most by imposing some cost, the application could have been allowed. The earlier cost was paid, and therefore, when it comes to the right of the parties and the redressal of the dispute or problem could have been resolved on that day by imposing cost, then such attitude or course ought to have been adopted. The subsequent orders appear to be in the same line taking into consideration the fact that the earlier application was rejected. Even if we take that on 14-03-2019 the respondent-present petitioner was absent, yet on the subsequent day i.e. on 19-03-2019 he was present, and if he would have expressed his intention or it could have been gathered from the learned advocate representing him, then the said order ought to have been set aside regarding no-cross by imposing certain costs. When the Court is supposed to take note of cause from both sides then a balance has to be struck. Even if there might be a conduct on behalf of one of the party to protract the trial then also it is not necessary to proceed with the rejection of the applications. Fair opportunity needs to be given to both sides. Under such circumstance, the writ petition deserves to be allowed, however now certain conditions are required to be imposed on the petitioner.

Hence following order.

ORDER

(1) The impugned orders dated 14-03-2019 and 15-10-2019 passed by learned Judge, Family Court, Latur in Petition No.33 of 2018 below Exhibit 24 and 28 are hereby set aside.

(2) The petitioner to deposit cost of Rs.10,000/- (in words rupees ten thousand), before the learned Court on 29-01-2020 and then take cross-examination of the applicant on the same day.

(3) In case, for any reason the applicant is absent, then the learned Judge may permit the cross to be taken on the next adjourned date.

(4) In any case, there shall not be any adjournment on behalf of the petitioner. Thereafter also the present petitioner shall not take adjournment on any count, and definitely the discretion is with the learned Judge of the Family Court, if at all he finds that, an inevitable ground has been made out by the petitioner.

(5) The learned Judge of the Family Court to dispose of

the petition as early as possible and not beyond the period of three (03) months from the date of the next date before the Family Court i.e. 29-01-2020.

(6) The amount of the cost be given to the original applicant.

Rule is made absolute in aforesaid terms.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.