

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2037 O F 2020

Shailesh Keshav Kanchan	.. Petitioner
Versus	
Roopla Venkatesh Mendon	.. Respondent

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Mr. J.P. Kotian i/b R.K. Shetty for the petitioner.
Mr. Yogendra M. Kanchan i/b M/s.YMK Legal for respondent.

CORAM: BHARATI DANGRE, J.

DATED : 4th MARCH 2020

P.C:-

1 Being aggrieved by the rejection of an application filed vide Exhibit-37 seeking setting aside of the “No cross” order dated 17th December 2019”, the petitioner is before this Court.

2 With the assistance of learned counsel for the parties, I have perused the order sheet and in particular the last three dates of the proceedings in Petition No.A/2412 of 2013 (Shailesh Keshav Kanchan Vs. Roopla Venkatesh Mendon).

3 The order sheet speaks for itself. On 24th October 2019, the case was adjourned for cross-examination of the

respondent wife. On 17th December 2019, the petitioner remained absent and his Advocate was present. The bone of contention between the parties is that the counsel was not ready for proceeding with the cross examination and as a consequence the pursis came to be filed by the respondent Advocate for closing the evidence.

4 The matter was then adjourned for final arguments on 9th January 2020. On the said date, Exhibit-36 Application titled as mentioned above came to be filed. It came to be rejected by recording that the petitioner husband is absent and the case being old one, does not permit an indulgence. On the same date, written arguments filed by Advocate for the respondent was taken on record and the matter was fixed for judgment. The parties are in agreement that the judgment is not yet pronounced. It is no doubt true that the Family Court must make an attempt to dispose of the petitions filed before it in an expeditious manner and the anxiety of the Court in this matter particularly when this petition was pending since 2013 can be very well understood.

 However, at the same time, the Courts must also be conscious of the fact that it must accord due opportunity to the parties and a solitary absence of a party may not deprive him of his right available under the statute and in this case particularly, when it is the case of the petitioner that he was in Mangalore and not available on 17th December 2019.

5 The well accepted proposition in law “*Justice delayed is justice denied*” has a co-extending parallel that “*Justice hurried is justice buried*” allow one more opportunity to the petitioner to cross examine and in particular when the learned counsel for the petitioner undertake that the cross examination would not travel beyond three sessions (one hour each). Ends of justice would be met by setting aside the impugned order and by affording opportunity to the petitioner to cross examine the respondent wife.

6 The learned counsel for the respondent vehemently contest the relief sought for and submit that the respondent has to remain present for the cross examination and for her it is a day wasted since she is serving. This may be true and by way of a some compensation and relief in her favour, the petitioner is directed to pay cost of Rs.25,000/- to the respondent for availing the opportunity which has been denied to him.

7 On the payment of costs of Rs.25,000/- to the respondent within a period of one week, the Judge, Family Court is directed to reschedule the cross examination of the respondent by fixing a date by adjusting its calendar, before 31st March 2020. On the cross examination being completed, the learned Judge may proceed to conclude the matter.

7 Writ Petition is allowed with the above directions to the Family Court.

SMT. BHARATI DANGRE, J