

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 6776 OF 2018**

Saraswati Subhash Bar	...Petitioner
Versus	
Subesh Subal Bar	...Respondent

Mr. S. C. Mangle i/b Mr. S. B. Chandan for the Petitioner

Mr. Kishor H. Hase for the Respondent

CORAM : REVATI MOHITE DERE, J.
MONDAY, 10th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 25th January 2018 passed by the learned Civil Judge Senior Division, Kalyan below Exhibit 73 in Marriage Petition No. 158 of 2012, by which, the petitioner's application seeking setting aside of the order of 'No Cross' dated 16th August 2017 passed by the trial Court, was rejected.

3 Perused the papers, including the impugned order. The petitioner is the wife of the respondent, who has filed a petition for divorce as against the petitioner in the Court of the learned Civil Judge Senior Division, Kalyan bearing Marriage Petition No. 158 of 2012. Petitioner-

wife filed her written statement in the trial Court, sometime in January 2014. Thereafter, the respondent-husband filed his affidavit of evidence in the trial Court on 28th January 2014. On two earlier occasions, i.e. on 18th January 2015 and 24th March 2017, the trial Court set aside the order of 'No Cross' passed as against the petitioner, firstly without cost and secondly, subject to cost. It appears that again on 16th August 2017, the petitioner filed an adjournment application (Exhibit 63) on the ground that her Advocate was unwell. The said application was rejected by the trial Court and the learned Judge passed an order of 'No Cross' on the very date i.e. on 16th August 2017. According to the learned counsel for the petitioner-wife, the petitioner-wife never realised that an order of 'No Cross' was passed against her and that she was under a bonafide impression that the adjournment application was allowed. It appears that thereafter on two occasions i.e. on 20th September 2017 and 24th October 2017, the proceedings were adjourned by consent of the parties. According to the learned counsel for the petitioner, only on 25th January 2018, the petitioner-wife realized that an order of 'No Cross' was passed on 16th August 2017, pursuant to which, she filed an application (Exhibit 73) for setting aside the said order of 'No Cross' dated 16th August 2017. The said application was resisted by the respondent-husband. The learned Judge, after hearing the parties, was pleased to pass the impugned order. Hence, this petition.

4 The learned Judge while rejecting the application had observed that the petitioner is trying to delay the proceedings and as such, prolonging the matter. The matter is pending for cross-examination of the respondent-husband since 2014. Learned counsel for the petitioner, however, undertakes, on instructions of the petitioner-wife, that the petitioner-wife will remain present in the trial Court on 12th February 2020, on which date, the petitioner's Advocate will proceed with the cross-examination of the respondent-husband, unless the Court adjourns the matter to some other date. The petitioner-wife further undertakes that she will not seek any adjournment on any ground and will proceed with the cross-examination of the respondent-husband on the date given by the trial Court. Infact, *prima facie*, no infirmity can be found in the impugned order, as the trial Court has rightly after considering the adjournments sought by the petitioner, rejected the application for setting aside the order of 'No Cross' dated 16th August 2017. However, by way of indulgence, and in the interest of justice, and in view of the statement made by the learned counsel for the petitioner, on the instructions of the petitioner, the impugned order dated 25th January 2018 passed by the learned Civil Judge Senior Division, Kalyan, below Exhibit 73 is quashed and set-aside. The petitioner is permitted to cross-examine the respondent-husband on the next date i.e. on

12th February 2020 or any date given by the trial Court. The petitioner not to seek any adjournment in conducting the cross-examination of the respondent-husband.

5 The petition is allowed, subject to the petitioner paying cost of Rs. 2,500/- to the respondent on 12th February 2020.

6 Petition is disposed of accordingly.

7 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.