

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

Writ Petition No. 3110 of 2019

Swapnil Kare Vs. Nisha Punde

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

Court's or Judge's orders

Mr. Muhammed Ateeque, Advocate for the petitioner
Mr. M.P. Kariya, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : MARCH 13, 2020

By this writ petition, the petitioner has challenged two orders. The first order is dated 19/01/2019, whereby no cross order was passed against the petitioner due to his absence before the Family Court. The second order challenged in this petition is dated 31/01/2019, whereby the application filed by the petitioner for setting aside the no cross order was rejected.

2. The respondent has filed an application before the Family Court under Section 125 of the Code of Criminal Procedure for grant of maintenance against the petitioner. It is claimed that marriage was solemnized between the parties and that she is entitled to relief under the aforesaid provision. The application has been pending before the Family Court since the year 2014.

3. In order to demonstrate that the impugned orders are sustainable, the learned counsel appearing for the petitioner invited attention of this Court to the *roaznama* of the Family Court, pertaining to the said proceedings. A perusal of the same indicates that the Family Court itself had adjourned the application of the respondent on 01/12/2018 to 15/12/2018 for dismissal. It appears that the said order was passed by the Family Court in the backdrop of the respondent having failed to lead her examination-in-chief for a considerable period of time after filing her affidavit in evidence.

4. On 15/12/2018, the proceedings were adjourned to 19/01/2019. The record shows that the petitioner herein was absent, but, his counsel was present. On 19/01/2019, the Family Court passed the impugned order directing no cross of the respondent herein, purportedly due to absence of the petitioner and his counsel before the Family Court. The case was adjourned to 31/01/2019. In the meanwhile, the petitioner filed the aforesaid application for setting aside the order of no cross and the said application stood dismissed on 31/01/2019, due to the alleged absence of the petitioner before the Court. It is significant that on the same day, the Family Court also recorded that since the petitioner herein had failed to lead evidence, his evident also stood closed.

5. As a consequence, as of today only the evidence of the respondent is on record before the Family Court and the petitioner is neither permitted to cross-examine the respondent nor he is now permitted to lead evidence on his behalf.

6. Although the learned counsel appearing for the respondent has vehemently opposed the present writ petition and it is pointed out that the respondent is fighting for order of maintenance for six years before the Family Court, this Court finds on perusal of the above mentioned details of the *roznama* that post 15/12/2018, the proceedings before the the Family Court continued at an extremely accelerated pace when compared to the manner in which the application was being pursued by the petitioner, till the aforesaid date. Even if it could be observed that the petitioner may have remained absent on a particular date before the Family Court, that in itself could not have been a reason to pass the impugned order to deprive the petitioner completely of any opportunity to cross-examine the respondent and / or to lead evidence in support of his contention. The grievance raised on behalf of the respondent can be taken care of by giving appropriate direction to the Court below to dispose of the application at the earliest. But, the said direction would be meaningful only if both the parties co-operate with the Court below.

7. On the basis of material on record, this Court is of the opinion that the impugned orders passed by the Court below are not sustainable. Accordingly, the application is allowed. The impugned orders are quashed and set aside.

8. The respondent is directed to remain present before the Family Court on **23rd March 2020**, to remain available for cross-examination. The petitioner shall start cross-examination of the respondent through counsel on **23rd March 2020**. Thereafter, the parties will co-operate with the Court below for completing recording of evidence at the earliest and then to advance final arguments for the application to be disposed of expeditiously.

9. The Family Court is directed to dispose of the application as expeditiously as possible and in any case on or before **15th May, 2020**.

10. The writ petition is allowed in above terms.

JUDGE