

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6928 OF 2022

Dean Fernandes

...Petitioner

Vs.

Jessica Fernandes

...Respondent

Mr. Ashish Dubey for the Petitioner.

CORAM : C.V. BHADANG, J.

DATE : 24 AUGUST 2022

P.C.

. The challenge in this petition is to the order dated 16.02.2022 passed by the Family Court at Mumbai in Petition No. A-2564 of 2019. By the impugned order, the Family Court has imposed costs of Rs.15,000/- while permitting the Petitioner to file an affidavit in reply in lieu of evidence

2. I have heard the learned counsel for the Petitioner. Perused record.

3. The learned counsel for the Petitioner has placed reliance on the decision of the Supreme Court in *Sanjivkumar Jain v/s. Raghubir Saran Charitable Trust and Others*¹ in order to submit

1 (2012) 1 SCC 455

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that the costs cannot be in excess of Rs.3,000/-. It is submitted that there is a outer limit fixed under Section 35-A of CPC. He, therefore, submitted that the Family Court was not justified in imposing such heavy costs.

4. I have considered the submissions made. The impugned order reads as under:

ORDER

Read application and say. Today matter is for cross examination. Respondent and her counsel ready for cross examination. In the morning, Petitioner has informed the court that he is ready for cross-examination and in IInd Session, he has filed this application. He has not mentioned the reson for filing additioal evidence. However, in the interest of justice and to avoid multiplicity of litigation, application is allowed, subject to costs of Rs.15,000/- Costs is condition precedent.

It can thus be seen that the Petitioner had earlier filed affidavit in lieu of evidence and sought to file an additional evidence which in fact is allowed by the learned Family Court subject to costs of Rs.15,000/-. The contention based on Section 35-A of CPC to my mind cannot be accepted as 35-A pertains to imposition of costs for false or vexatious claims or defences. The costs in the present case cannot be said to be granted under Section 35-A. The decision of the Supreme Court is also involving the grant of costs under Section 35-A and 35-B.

5. Considering the over all circumstances, no case for interference is made out.

The Writ Petition is dismissed with no order as to costs.

C.V. BHADANG, J.