

WRIT PETITION NO. 3829 OF 2022

Vs.

Court's or Judge's orders

CORAM: MANISH PITALE, J.

DATE : 20th SEPTEMBER, 2022

3. This Court issued notice for final disposal in the present writ petition on 12/07/2022. The sole respondent (plaintiff) was served, but, she has chosen not to appear before this Court.

4. The impugned order dated 12/11/2021, has rejected the application at Exh.42, seeking setting aside of a no cross order dated 06/08/2021, passed by the Trial Court. In the said order, it is recorded that there was negligence on the part of the petitioners as neither they nor their Advocate remained present.

5. The petitioners moved a review application through their counsel and brought to the notice of the Trial Court that the application at Exh.42, seeking setting aside of no cross order was moved by the counsel at the earliest possible, but, thereafter, the father of the counsel died on 27/10/2021 and he was caught up in the religious ceremony due to which time was sought even for hearing on the application at Exh.42. But, the Trial Court did not find any error apparent on the face of the record and accordingly, dismissed the review application at Exh.46, by impugned order dated 14/01/2022.

6. It was also brought to the notice of this Court on behalf of the petitioners that there have been subsequent developments, wherein the petitioners had applied for amendment of their written statement, which was allowed and even the respondent moved for consequential amendment of the plaint, which was permitted by specific order passed by the Trial Court. Accordingly, as on today, the plaint as well as the written statement stand amended and, therefore, perhaps the plaintiff i.e. respondent may also have to lead further evidence in the matter. It is submitted that the no cross order was passed in the context of the first witness examined by the respondent

– plaintiff and, therefore, if this Court sets aside the impugned order, it would be in the interest of justice.

7. Having perused the material on record, it becomes evident that in the review application, the counsel appearing for the petitioners had placed on record his personal ground for not being able to attend hearings on the application at Exh.42 diligently. The reason being that the father of the counsel had expired and he was caught up in the rituals thereafter. This Court is of the opinion that the aforesaid factor, as also the subsequent developments in the matter showing that as on today, the plaint as well as the written statement stand amended, it would be in the interest of justice that the impugned orders are set aside and opportunity is granted to the petitioners to cross-examine the witness of the respondent – plaintiff.

8. In view of the above, the writ petition is allowed. The impugned orders dated 12/11/2021 and 14/01/2022, are quashed and set aside. Application at Exh.42 is allowed.

9. In view of the above, the petitioners shall now cross-examine the witness of respondent – plaintiff at the earliest.

JUDGE