

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4612 OF 2022

Swapnil S/o. Sitaram Pujari Petitioner

Versus

Sow. Monali Swapnil Pujari Respondent

.....
Mr. Rahul R. Karpe, Advocate for the Petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned 9th Civil Judge, Senior Division, Ahmednagar, below Exhibit-31 in Hindu Marriage Petition No.390 of 2019.

2. The petitioner has filed Hindu Marriage Petition under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights. By filing written statement, the respondent/wife denied the marriage. The petitioner, thereafter, filed his affidavit in lieu of examination-in-chief (Exhibit-17), he was cross-examined. The petitioner, thereafter, failed to lead evidence, hence, 'No evidence' order was passed by the Trial Court on 28/01/2022. The respondent/wife did not step into witness box and filed her evidence closer *purshis* on 22/02/2022.

3. The petitioner, thereafter, filed Exhibit-31 seeking permission to lead evidence by setting aside 'No evidence' order passed by the Trial Court. The respondent opposed the said application by filing say. The Trial Court rejected the application holding that in spite of grant of sufficient opportunity on five times, the petitioner failed to lead evidence. Even his advocate was absent on most of the dates, and the matter is kept for final argument since 08/03/2022. The petitioner is aggrieved by this order.

4. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto and the impugned order.

5. Learned advocate for the respondent strenuously opposed the petition contending that Rule 1 of order XVII provides three opportunities to the party to lead evidence, and the petitioner has failed to avail five opportunities. By relying on Rule 3 of Order XVII, he submits that the Trial Court is justified in rejecting the application of the petitioner. Further submission is, since the respondent has denied the marriage itself, and the matter is already fixed for final argument, she should not be made to suffer the harassment of facing the Trial. He, therefore, seeks dismissal of the writ petition.

6. It is a settled legal position that the rules of procedure are handmaid of justice, and they cannot be used to deny fair and reasonable opportunity to the parties to lead evidence, and to produce the best possible evidence in support of their case. Though record indicates that on five dates, opportunity was given to the petitioner to lead evidence, and he has failed to avail the said opportunities, it appears that the petitioner failed to avail the said opportunities during Covid pandemic.

7. Considering the peculiar facts of the present case, this Court is of the view that it is desirable in the interest of justice, to grant one more opportunity to the petitioner to lead evidence, particularly in view of the fact that the respondent has denied the marriage.

8. For the aforesaid reasons, the writ petition is allowed.

9. The impugned order dated 05/04/2022 passed by learned 9th Civil Judge, Senior Division, Ahmednagar, below Exhibit-31 in Hindu Marriage Petition No.390 of 2019 is hereby quashed and set aside.

10. Application below Exhibit 31 is allowed subject to the petitioner paying costs of Rs.25,000/- to the respondent/wife before the Trial Court.

11. The Trial Court shall record the evidence of the petitioner or his witnesses within a period of two weeks from the date of receipt of writ of this order, and shall decide the Hindu Marriage Petition No.390 of 2019 within a period of four weeks after recording of evidence is over.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane