

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4851 OF 2023

Smt. Smita Vivek Bhurkapalle Petitioner

Versus

Vivek Ramakant Bhurkapalle Respondent

.....

Mr. P.G. Rodge, Advocate for the Petitioner

Mr. S.V. Gundre, Advocate for Respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 06th JULY, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Judge, Family Court, Latur, below Exhibit-234, thereby rejecting the application filed by the petitioner/wife for recalling the respondent/husband for further cross-examination.

2. In earlier round of litigation, this Court vide order dated 17/01/2022, passed in Misc. Civil Application No.40 of 2020, directed the Trial Court to decide the matter within six months.

3. It is not in dispute that advocate for the petitioner has extensively cross-examined the respondent/husband. By the present application, the applicant prayed for recalling of the respondent/husband for further cross-examination on the point of financial aspects.

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 vehemently opposed the prayer of the petitioner/wife contending that earlier application filed by the petitioner for the same prayer is rejected and that order was not challenged by the petitioner/wife. The present application Exhibit-234 in fact a review application, and the same is rightly rejected by the Trial Court. He submits that no case is made out by the petitioner to interfere in the impugned order, and the writ petition may be dismissed.

6. Though this Court had directed to the Trial Court to decide the matter in time bound manner, that cannot be a ground to deny opportunity to the wife to conduct cross-

examination of the respondent/husband in respect of financial aspects. Record reveals that earlier advocate representing the petitioner/wife, who conducted cross-examination of the respondent/husband has joined judicial service. Thereafter, another advocate, who was engaged by the petitioner/wife, unfortunately passed away in the month of August, 2022. The application seeking recall of respondent/husband for further cross-examination is filed by the wife in her personal capacity. It is a fact that the said application is rejected by the Trial Court, and the said order is not challenged by her.

7. Be that as it may, in the interest of justice, and to give fair opportunity to the petitioner/wife to contest the matter on merits, this Court is inclined to allow the petition. Hence, the following order:

ORDER

- (I) The writ petition is allowed
- (II) Impugned order dated 31/03/2023 passed by learned Judge, Family Court, Latur, below Exhibit-234 in Petition No. A-28 of 2018 is hereby quashed and set aside.
- (III) Application Exhibit-234 is allowed.

- (IV) The parties shall appear before the Family Court, Latur on 01st August, 2018. On that day itself, the petitioner/wife shall cross-examine the respondent/husband. The Trial Court to proceed with the matter, thereafter, in accordance with law.
- (V) It is made clear that the petitioner is entitled to the cross-examination of the respondent/husband, which shall be restricted to the extent of financial aspects only.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane