

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11130 OF 2021

**VIJAY DIGAMBER MOHITE
VERSUS
PRIYANKA VIJAY MOHITE**

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Advocate for Petitioner : Mr. Mote Rahul P

Advocate for Respondent : Mr. Kshitij Surve h/f Mr. Hemant Surve

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CORAM : SHAILESH P. BRAHME, J.

DATE : 29th NOVEMBER 2023.

Per Court :

. Heard the learned Counsel for both the sides finally.

1. The common order dated 12.07.2021 passed below application at Exhibit – 29 and 32 in Petition No.A-278/2018 by the learned Principal Judge, Family Court, Aurangabad is questioned in this petition by husband who is prosecuting the proceeding for dissolution of marriage against respondent/wife.

2. The grievance of the petitioner is as to manner in which the proceedings are conducted at the instance of respondent. The petitioner filed affidavit of examination in chief before the trial Court. Despite opportunity no cross was conducted by the respondent or a lawyer. On 28.02.2019, a right to cross-examination was fortified. It was set aside

by order dated 25.03.2019 by order below Exhibit-19. The petitioner was being cross-examined partly. It was deferred and few dates were gone by. By 19.07.2019, the cross was concluded.

3. The petitioner tendered affidavit of examination in chief of PW-2/Ganesh. No cross was conducted hence the respondent again suffered forfeiture of right to cross-examination on 20.07.2019. The respondent came out with application at Exhibit-29 filed on 05.09.2019 to recall the petitioner for cross-examination. By order dated 06.01.2020, the evidence of the respondent was foreclosed and matter was posted for final argument. Application at Exhibit-30 is filed for recalling the order dated 06.01.2020. An application at Exhibit-32 is filed by the respondent for cross-examination of PW-2/Ganesh.

4. The application at Exhibit-29 and 32 are allowed subject to cost of Rs.1000/-. Learned Counsel for the petitioner submits that the respondent is very casual in prosecuting the matter. He would submit that it is impermissible to recall a witness just because a cross-examination conducted by earlier lawyer is cryptic. He would submit that the respondent was given sufficient opportunity to cross-examine the petitioner as well as to cross-examine PW-2. He would submit that the impugned order is perverse and unsustainable.

5. Per-contra, learned Counsel for the respondent supports impugned order. He submits that the cross-examination in matrimonial dispute has solemn significance. Especially when there is word against

word cross-examination carries importance and decisive. He would point the crypticness of the cross-examination of the petitioner. According to him, learned Judge is justified in holding that for the mistake of the lawyer, a litigant should not suffer.

6. I have considered the submissions of the litigating sides. The proceedings are for dissolution marriage. The respondent had engaged a lawyer who conducted cross-examination of the petitioner. A lawyer is changed by her and thereafter applications Exhibit-29 to 32 are filed. Normally, it is not permissible to recall a witness to fill up the lacuna or just on the ground that the cross-examination conducted earlier is not adequate.

7. I find that in a matrimonial dispute independent evidence as such is rare. A fullest opportunity needs to be given for cross-examining the witness. The cross-examination carries significance to unravel the truth. The conduct of the parties in matrimonial relationship is the subject matter of the proceedings. The same needs to be tested to the touchstone of cross-examination. Some lenient approach is required to be adopted to extent opportunity to parties. In that view of the matter, I approve the finding recorded by the learned Judge.

8. It appears from record that the respondent is not punctual in prosecuting the matter. The petitioner is the sufferer for not timely conducting the cross-examination. However in that case, it would be appropriate to impose condition on the respondent.

9. I do not find any perversity in the impugned order. The learned Judge has taken reasonable view considering the material on record. No interference is called for in the impugned order. However the respondent shall tender an undertaking before the learned Principal Judge, Family Court, Aurangabad that she should cooperate for earlier disposal of the proceeding and should not protract the matter in any manner. Undertaking should be given within a period of two weeks from today.

10. The writ petition is disposed of.

[SHAILESH P BRAHME, J.]

Najeeb.