

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3188 OF 2023

Muzaffar Hasan Syed

...Petitioner

Versus

Sayeeda Muzaffar Hasan Syed & Anr.

...Respondent

.....

Mr. Ashok Saraogi for the Petitioner-husband.

Ms. Nushrat Shah for Respondent No.1-wife.

Mr. C. D. Mali, AGP for the Respondent No.2.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 27th MARCH, 2023.

P.C.

1. By this Petition the Petitioner-husband takes an exception to an Order passed by the Family Court at Bandra on 28th December, 2022, by which, his Application for setting aside the Order of No Cross-examination of the Respondent-wife, came to be rejected *inter alia* on the ground that despite directing the Petitioner-husband to pay the cost, he did not comply with the same.

2. Heard Mr. Saraogi, learned Counsel for the Petitioner-husband and Ms. Nushrat Shah for the Respondent-wife who waived service.

3. The Respondent-wife has preferred a Petition under Section

2(viii)(a) of the Dissolution of Muslim Marriages Act, 1939. After tendering her Affidavit in lieu of Examination-in-chief on 26th September, 2019, the Petitioner-husband failed to cross-examine her. A cost of Rs.1,000/- was imposed upon the husband, however, he did not pay the cost. Mr. Saraogi submits that owing to his poverty, the Petitioner-husband could not pay the cost. It is submitted that his valuable right to cross-examine the Respondent-wife cannot be taken away, for want of presence of his advocate.

4. In view of principles of natural justice and for proper adjudication of the disputes between the parties, one more opportunity is required to be given to the Petitioner-husband.

5. Because of his conduct, the wife's Petition has been delayed and, therefore, some amount of cost needs to be imposed upon the Petitioner-husband, as a condition precedent to permit him to cross examine the Respondent-wife. As such, the Petition stands disposed off in terms of the following order.

ORDER

- i. The impugned Order dated 28th December, 2022 is quashed and set aside, subject to deposit of an amount of Rs.10,000/- (In words Rupees Ten Thousands only) by the Petitioner-husband in the Family Court within one

week from uploading this Order on the official website of this Court.

- ii. After depositing the amount of cost, the Petitioner-husband shall be permitted to cross-examine the Respondent-wife on any date, which would be fixed by the Family Court.
- iii. The Petitioner-husband shall cross-examine the Respondent-wife without seeking further adjournments.
- iv. Liberty to the Respondent-wife to withdraw the amount of cost from the Family Court.
- v. Petition stands disposed off in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]