

Anand

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

WRIT PETITION NO. 3665 OF 2023

Deepakbhai Lavjibhai Gohil

.Petitioner

Vs.

Bhavika Deepakbhai Gohil

.Respondent

**ANAND
SUDHAKAR
SUDAME**

Mr. Fauzan i/b. Mr. Dilip Kamath, Advocate, for the Petitioner
Mr. Jeet Gandhi a/w. Mr. Uttam Shukla & Mr. Akash Gupta,
Advocate, for the Respondent

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 28.07.2023

P. C.

. The challenge in the Petition is to the order dated 30.01.2023 passed by the learned Judge, Family Court, Thane in M. P. No. C-5 of 2018 rejecting the Petitioner's application for setting aside 'no cross' order which was passed on 02.03.2022.

2. Learned counsel appearing for the Petitioner submits that the affidavit of evidence of the Respondent - wife was filed on 06.10.2021 and the order of 'no cross' was passed on 02.03.2022. He would further submit that the application for setting aside 'no cross' order came to be filed on 18.07.2022. He would further submit that as the Petitioner is working as Custom Officer and is stationed in Chennai, he could not get leave and as

such, could not appear in the said case. He would submit that although the Advocate was appointed, instructions could not be given to the Advocate for conducting the cross.

3. Per contra, learned counsel appearing for the Respondent – wife submits that there is no cause for indulgence. He would further submit that the affidavit evidence has been filed on 06.10.2021 and the application has been filed for setting aside the ‘no cross’ order after a delay of almost four months from the date of passing of the ‘no cross’ order.

4. Considered the submissions.

5. The impugned order dated 30.01.2022 rejecting the application for setting aside ‘no cross’ order without stating any reason. It is not stated as to whether the Petitioner was grossly negligent in conducting the matter. It needs to be considered that by closing the cross-examination, a valuable right is being deprived and as such, unless it is shown that the Petitioner was grossly negligent in conducting the matter, the trial Court ought to have taken lenient view and set aside the order of ‘no cross’. The delay cannot be compensated in terms of money.

6. In view of the above, the impugned order dated 30.01.2023 is hereby quashed & set aside subject to payment of costs of Rs. 5,000/- to be paid to the Respondent – wife. The costs to be paid within a period of one month from today.

7. The Writ Petition stands allowed.

(SHARMILA U. DESHMUKH, J.)