

AGK

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

WRIT PETITION NO.11931 OF 2022

Prathmesh Praful Pathak

... Petitioner

V/s.

Aditi Prathmesh Pathak

... Respondent

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Mr. Anuj Tiwari i/by The Laureate for the petitioner.

Mr. Prasad L. Gajbhiye for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 5, 2023

P.C.:

- 1.** Rule. Rule is made returnable forthwith by consent.
- 2.** The petitioner is challenging orders dated 11th August 2022 and 20th September 2022 refusing to allow the petitioner to cross-examine the original petitioner (respondent herein).
- 3.** The petitioner is the husband and respondent is wife. The wife filed Petition bearing No.A-1124 of 2016 before the Family Court at Bandra under sections 13(1)(ia) for cruelty on 7th May 2016. The petitioner contested the same by filing written statement. On 3rd December 2021 the respondent submitted her affidavit in lieu of examination-in-chief. On 15th June 2022 due to failure to conduct cross-examination, Family Court passed an order of 'no cross' against the petitioner. On an application dated 21st

July 2022 the learned Family Court set aside the order of no-cross by imposing costs of Rs.10,000/- and the matter was adjourned to 11th August 2022. On 11th August 2022, the petitioner asked questions to the respondent/wife as regards passport of the respondent.

4. According to the petitioner, his advocate asked the respondent as to whether she was ready to produce her passport, which according to the petitioner was answered in the affirmative. Therefore, according to the petitioner his advocate requested the Court to defer the cross-examination to enable him to seek questions on the point of passport. Learned Family Court, therefore, restricted the cross-examination by the petitioner to the point of passport which the petitioner challenged in this Court by way of writ petition. On 20th September 2022, when the petitioner was called upon to cross-examine the respondent, the petitioner submitted that he is ready to settle the matter. The learned Judge sought necessary details as regards the terms of settlement but the petitioner was unable to provide the details of terms of settlement and, therefore, the learned Family Court passed order of 'no cross', which is the subject matter of present petition.

5. Having heard learned advocates for both sides, in my opinion, considering the facts of the case that according to the petitioner the cross-examination of the respondent on the point of passport was essential for effective adjudication of the dispute pending before the Family Court. According to the petitioner, the respondent left matrimonial house on her own and according to him, passport is the document which can throw light on the said

factor.

6. In that view of the matter, in my view, the interest of justice would be met if the petitioner is permitted to cross-examine the respondent on all points. The prejudice in the form of delay caused to the respondent can be taken care of by directing the Family Court to decide the proceedings within time-bound program. Hence, following order:

- a) Rule is made absolute in terms of prayer clauses (b) and (b-1);
- b) The petitioner shall conclude the cross-examination of the respondent on 24th February 2023, or such other date which is convenience to the learned Family Court;
- c) The petitioner shall pay costs of Rs.10,000/- to the respondent before 20th February 2023.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)