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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.13083 OF 2022**

Mr. Avinash Nivrutti Mali ...Petitioner

**V/s.**

Mrs. Poonam Avinash Mali ...Respondent

Mr. Paresh More a/w Adv. Kiran Mohite for Petitioner.

Mr. Kuldeep U. Nikam a/w Mr. Prasad Avhad for Respondent.

**CORAM : AMIT BORKAR, J.**

**DATED : FEBRUARY 03, 2023**

**P.C.:**

1. The petitioner-husband is challenging order dated 19<sup>th</sup> September 2022, rejecting application for issuance of summons to the employer of the wife.

2. The petition has been filed by wife for divorce against the husband on the ground of cruelty. The evidence of wife is over in December 2021. The defendant has started his evidence. During the course of evidence, the husband has filed an application stating that the wife is working with Jagtap Clinic and Research Centre from October-November 2017 till the filing of application. It is stated that she has denied in her cross-examination that she is in service. Therefore, it is necessary to prove that she is in service.

3. The trial court while rejecting the application has recorded a finding that the wife has already relinquished the right of maintenance by filing application below Exhibit-118 and the Court has allowed her to relinquish right of maintenance by passing order below Exhibit-118. Accordingly, issue no.3 relating to maintenance has been deleted. Since the issue of maintenance no longer remains to be adjudicated by the court, it is not necessary to get information regarding income of wife. Allowing such application would amount to wastage of time of the court and would amount to abuse of process of court.

4. Learned advocate for the petitioner submitted that such witness is necessary to prove cruelty by wife namely that she is making false statement on oath. At this stage, it is necessary to note that the petition has been filed by the wife on the ground of cruelty. The initial burden of proving cruelty shall always be on the petitioner. There is no question of allowing the husband to prove the fact of cruelty by examining employer of wife to prove cruelty. In my opinion, such witness is not necessary for proving the allegation of cruelty as alleged by the husband.

5. There is no merit in the petition, petition is therefore disposed of. No costs.

**(AMIT BORKAR, J.)**