



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 5521 of 2023

Dr. Vaibhav S/o Pralhad Lende

Versus

Dr. Ashwini W/o Vaibhav Lende

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Mangesh Moon, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 28th AUGUST, 2023.

The application moved by the petitioner to examine three-four witnesses to prove the cruelty, in a petition filed by the petitioner under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for dissolution of marriage, came to be rejected on the ground that despite the sufficient opportunities and after closing the evidence by the petitioner on 14th February, 2022, the application cannot be allowed on the ground that earlier lawyer did not examine the importance witnesses, is under challenge in this petition.

2. After going through the application, it is evident that it does not refer the names of witnesses. However, it only says that petitioner wants to examine

three-four witnesses which are very crucial and important, but previous counsel did not examine.

3. The application further says that incident happened before the petitioner's friends who are doctors and neighbourer and since they are eye witnesses of the cruelty made by the respondent, the petitioner wants to examine them.

4. There is no mentioned that the names of these witnesses were informed to the earlier advocate and he was requested to examine to these witnesses and he failed to examine them and therefore after change of lawyer, the request is being made for allowing the petitioner to examine the witnesses.

5. The learned trial Court has recorded the reasons for rejection, in paragraphs 5 and 6 of the impugned order which read thus:

5. Thereafter the matter was posted for evidence of respondent. Respondent filed her evidence affidavit on 21.04.2022. Her cross-examination was started on 05.09.2022. Respondent continuously remained absent therefore, on 13.01.2023, the evidence of respondent came to be closed and matter was listed for final argument. On 02.02.2023, respondent filed application Exh.55 for setting aside the above order. My learned predecessor allowed the application on costs of Rs.15,000/-. Respondent did not comply the said order therefore, on 03.06.2023 the evidence side of respondent came to be closed and matter was listed for final argument. In the meanwhile on 23.09.2022

petitioner filed Vakalatnama of another counsel vide Exh.52.

6. The above sequence of events show that petitioner got more than sufficient opportunities for putting forth his case. Petitioner himself closed his evidence side on 14.02.2022. Thereafter, also more than sufficient period has been elapsed in the intervening period. The contention of petitioner that his earlier counsel did not examine important witnesses cannot be considered at this stage. If such course is allowed then there will be no end for examining witnesses by any party. Every new counsel appearing in the matter would come with new list of witnesses on the ground that said witnesses are important witnesses. Considering the facts this court does not find any merit in the application. Therefore, same deserves to be rejected. Hence, I answer point No.1 in negative and in answer to point No.2 I proceed to pass following order:

ORDER

Application Exh.61 is rejected.

6. In light of reasons recorded in the impugned order, I do not find any merit in the present writ petition. Accordingly, writ petition is dismissed.

[ANIL S. KILOR, J.]