



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8732 OF 2023

Smt. Leena Rajneesh Jaroliya @
Leena Madan Bargava

... Petitioner.

Versus

Rajneesh Omprakash Jaroliya

... Respondent.

Mr. Sachin Hande, for the Petitioner.
Mr. Ajinkya Udane, for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : April 16, 2024.

P. C. :

1. Heard.
2. The petition takes exception to the order dated 19th January, 2013 passed below Exhibit-61 in Marriage Petition No.919 of 2017 rejecting the petitioner's application for setting aside the "No Cross" order.
3. The facts of the case are that the petition for divorce has been instituted by the respondent-husband. During the trial, the respondent-husband was to be cross-examined on 19th January, 2023. On that day, though the petitioner-wife and the Advocate were present however, the Advocate was not ready to conduct the cross-

examination. As such, the order dated 19th January, 2023 of “No Cross” came to be passed and the same day, an application was moved by the Advocate for the Respondent stating that the Respondent is ready to conduct the cross-examination and seeking to set aside the “No Cross” order. By the impugned order dated 19th January, 2023, the Trial Court noted that the present application was delaying the matter though opportunity was given to the respondent to conduct the cross-examination and rejected the application.

4. Heard Mr.Hande, learned counsel for the Petitioner and Mr.Udane, learned counsel for the Respondent.

5. Mr. Hande, learned counsel appearing for the Petitioner would submit that on the same date of the passing of the “No Cross” order, the application came to be filed. He submits that despite thereof the Trial Court failed to set aside the “No Cross” order and permit the Respondent to conduct cross-examination by erroneously observing that the same are delaying tactics. He submits that the matter has been diligently pursued by the respondent-wife and in the interest of justice the order “No Cross” be set aside.

6. *Per contra*, learned counsel for the respondent-husband submits that the marriage petition is pending since 2017 and despite sufficient

opportunities the trial is not proceeding. He submits that the Trial Court has therefore, rightly observed that the delaying tactics are being adopted by the respondent-wife and has rejected the application. He further submits that as the marriage petition is of the year 2017 the same may be expedited by this Court.

7. Considered the submissions and perused the record.

8. From the order “No Cross” dated 19th January, 2023 passed by the Trial Court, it appears that the Advocate for the Respondent-wife was not ready to conduct the cross-examination and therefore the order of “No Cross” came to be passed. For the default on part of the Advocate, litigant cannot be permitted to suffer. The order of “No Cross” has sought to be set aside on the same day i.e. 19th January, 2023 and there is specific pleading in the application that the Respondent is ready to conduct cross-examination. In such an event, the proper course would have been to set aside the “No Cross” order and immediately direct the Respondent to conduct the cross-examination. However, the Trial Court did not adopt the said course and rejected the application leading to the present litigation.

9. As it is not demonstrated that there was any fault on part of respondent-wife and it was the Advocate who had failed to conduct

the cross-examination, the Respondent-wife cannot be made to suffer for the default of her Advocate. As such, in the interest of justice, the order dated 19th January, 2023 of "No Cross" passed by the trial Court as well as order of the 19th January, 2023, rejecting the application below Exhibit 61 is hereby quashed and set aside.

10. As the petition is of the year 2017, it is expected that the Trial Court will give priority to the said petition and decide the same as expeditiously. Petition stands disposed in the above terms.

[Sharmila U. Deshmukh, J.]