



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12430 OF 2024

Amarsinh S/o. Naonath Patil Kothawale
Age: 35 Yrs. Occu. Service,
R/o. Baba Nagar, Vakhar Mahamandar
Kothawale Complex, Kalamb
Tq. Kalamb & Dist. Osmanabad

.....PETITIONER
(Ori. Respondent)

VERSUS

Jyoti W/o. Amarsinh Patil Kothawale
Age: 30 Yrs. Occu. Housewife,
R/o. Baba nagar, Vakhar mahamandal
Kothawale Complex, Kalamb
Tq. Kalamb & Dist. Osmanabad

Current Address: Khanapur nagar, Parbhani
Tq. & Dist. Parbhani
Police Station New Mondha, Parbhani

.....RESPONDENT
(Ori. Petitioner)

Mr. R. B. Hake, Advocate for the Petitioner
Mr. V. A. Bagal, Advocate for Respondent

CORAM : ROHIT W. JOSHI, J.

DATED : 10TH JULY, 2025

ORAL JUDGMENT :-

. The petitioner in the present petition is respondent in
Petition-E No.6 of 2023, which is the petition seeking
maintenance filed by his wife, who is the sole respondent in
the present petition.

2. The proceeding is filed under Section 125 of the Code of Criminal Procedure. The wife has filed her affidavit of examination-in-chief in the proceeding on 02.01.2024. Initially, the order to proceed without cross-examination of the wife was passed by the learned Family Court on 20.02.2024. Thereafter, the wife filed evidence of another witness on 10.04.2024 and order of no cross-examination of the said witness came to be passed on 10.04.2024.

3. The husband filed an application for recalling 'no cross' order. The said application was allowed and thereafter, cross-examination of the wife was conducted by the Advocate for the husband in part on 19.07.2024. Thereafter, till 09.09.2024, the husband did not conduct cross-examination on different dates on which the matter was posted. As a consequence of this, on 09.09.2024, no cross order came to be passed once again.

4. Perusal of order sheet dated 09.09.2024 will demonstrate that the husband and his Advocate were absent when called. An application for adjournment was filed by the husband, which was rejected by the learned Family Court. In

this backdrop, the husband filed application vide Exhibit 41 on 08.10.2024, seeking to recall the order of no cross passed on 09.09.2024. A statement is made in the application that the Advocate for the husband was ready to proceed with the cross-examination of the wife on the same date i.e. on 08.10.2024. Perusal of order demonstrates that the Advocate for the husband was absent when called repeatedly by the learned Court on 08.10.2024. The learned Court has recorded that when the husband was asked to come alongwith his Advocate for conducting cross-examination, a colleague of the Advocate of the husband appeared in the matter and informed that he did not have instructions to conduct cross-examination of the witness.

5. The learned Court has observed that the Advocate for the husband did not intend to conduct cross-examination and had merely left the application at Exhibit 41 with the Bench Clerk. In such circumstance, the learned Court has rejected the application for recalling order as to proceed without cross-examination of wife passed on 09.09.2024.

6. Learned Counsel for the husband contends that the

matter should not be allowed to proceed without cross-examination of the wife. He states that the situation can be addressed by imposing conditions on the husband.

7. Learned Counsel for the wife opposes the petition. He contends that the matter is deliberately being dragged by the husband. He contends that the application for recalling order dated 09.09.2024 is filed only in furtherance of the said intention of protracting the matter. Learned Counsel states that the husband is working on the post of Executive Engineer with Irrigation Department of Government of Maharashtra and the wife has no source of earning. He further states that the wife is also not getting any interim maintenance.

8. Normally in such matters, Courts are inclined to allow the applications so that the matters do not go uncontested. However, the facts of the present case are very peculiar. Apart from an intention to drag the proceeding, the conduct of the petitioner also indicates disrespect towards the learned Trial Court. As is reflected from the order impugned and the order sheet, the wife had filed affidavit of evidence in chief on 02.01.2024. The husband did not conduct cross-examination

on two consecutive dates, as a consequence of which, no cross order was earlier passed on 20.02.2024. In the meantime, the matter posted for further evidence and after a period of around five months i.e. on 19.07.2024 an order was passed granting permission to conduct cross-examination. After conducting cross-examination for some time, the learned Advocate for the husband again requested for adjournment for further cross-examination. The learned Judge has granted the said request and the matter was thereafter adjourned to 23.07.2024, 03.08.2024 and 31.08.2024 and 09.09.2024. The Advocate for the husband was absent although, he was repeatedly called till around 1:50 PM on 09.09.2024. Even on 08.10.2024, when the application at Exhibit 41 was filed, as is observed by the learned Judge, the Advocate left the application with the Bench Clerk and did not turn up at all.

9. Perusal of the order sheet will also demonstrate that after 08.10.2024, the husband has filed an application for amendment of written statement on 10.01.2025. The intention to arrest further progress of the proceeding is explicitly apparent on the face of record.

10. A statement is made in the application dated 08.10.2024 at Exhibit 41 that the husband was ready to proceed with cross-examination on the same date, on which the application was filed i.e. on 08.10.2024. However, unfortunately, the Advocate did not turn up for conducting cross-examination. He sent his colleague who expressed inability to conduct the matter. Such conduct is certainly disrespectful towards the learned Judge of the Trial Court. It is apparent that the application at Exhibit 41 was filed on 08.10.2024 without any intention to honor the statement made in the application wherein it was stated that the husband was ready for conducting cross-examination.

11. Having regard to such conduct of the husband, I find no reason to interfere with the order impugned in the present petition. The petition is devoid of any substance and is **dismissed** as such.

12. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)