

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3731 OF 2024

ARJUN
VITTHAL
KUDHEKAR

Sonali N. Mahendrakar

...Petitioner

Versus

Navin Kumar

...Respondent

Digitally signed by
ARJUN VITTHAL
KUDHEKAR
Date: 2025.02.11
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Mr. V. A. Shastry, for the Petitioner.

None for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED: 10 FEBRUARY 2025

P.C.:

1. Heard Mr. Shastry, learned Counsel for the Petitioner.
2. The challenge in this Writ Petition is to the Order dated 15th July 2023 passed in P. A. No.751 of 2017 by which 'No Cross' Order has been passed and Order dated 4th November 2023 passed below Exhibit – 67 in P. A. No.751 of 2017 which has been filed seeking to set aside the said "No Cross" Order. By said Order dated 4th November 2023 said Exhibit – 67 Application is dismissed for want of prosecution.
3. A learned Single Judge by Order dated 12th June 2024 has issued notice to the Respondent and specifically observed that notice to indicate that the Petition would be disposed of finally at the admission stage. Office note shows that although notice has been duly served on the Respondent as per Bailiff's Report dated 16th July 2024, none appears for the Respondent.

4. It is required to be noted that the learned Single Judge by Order dated 12th June 2024 has clearly stated that notice to indicate that the Petition will be disposed of finally at the admission stage. Accordingly, the Writ Petition is taken out for final disposal at the admission stage. In spite of service, the Respondent has not remained present. Thus, the contentions raised in the Petition have remain uncontroverted.

5. The impugned Order dated 15th July 2023 is as follows :-

“ORDER

Cross examination resumed on oath -

The Petitioner is present since morning. Respondent was present in the morning and informed that her Advocate is coming. Thereafter the matter was called at 12.15 pm and 1.00 pm, inspite of that nobody was present for the Respondent. The Respondent appears to be not interested in cross examining the Petitioner. Hence matter to proceed without her cross examination.”

6. In Application bearing Exhibit-67, it is specifically stated that when the matter was called out in the morning session at 11:30 a.m., the Petitioner – wife was present in Court and requested the Court that as the learned Advocate representing her comes from Aurangabad, to keep the matter at 01:00 p.m.. In the meanwhile, another matter between the same parties was called out before the learned 15th Joint JMFC, Pune and as the Petitioner went there for attending the same, the matter was called out when she was absent.

7. It is significant to note that ‘No Cross’ Order has been passed on

15th July 2023. The Application to recall the said Order being Exhibit – 67 has been filed immediately on the very day. Thus, this is not a case that the Petitioner is delaying in the matter.

8. It appears that, said Exhibit – 67 Application was on board on 4th November 2023 and due to miscommunication the Petitioner and her Advocate were not present on 4th November 2023 and therefore the said Application was dismissed for non-prosecution.

9. Thus, in the facts and circumstances of this case, the impugned Order dated 15th July 2023 as well as the Order dated 4th November 2023 passed below Exhibit – 67 are quashed and set aside and the said Application bearing Exhibit – 67 filed in P. A. No.751 of 2017 seeking that 'No Cross' Order be recalled is allowed.

10. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]