

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11262 OF 2024

Nausheen Aftab Merchant
@ Nausheen Zafar Ansari

...Petitioner

vs.

Aftab Aslam Merchant

...Respondent

Mr. Jayendra Khairnar a/w. Mr. Vikas Shivarkar, for the Petitioner.
Mr. Vaibhav Ghogare a/w. Mr. Suraj Ghogare, for Respondent.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 07, 2025

P.C:

1. Heard the learned counsel for the parties.
2. At the outset, the learned counsel for the respondent points out that the right of the defendant to adduce evidence stood forfeited by an order dated 11th November, 2024.
3. The learned counsel for the petitioner seeks leave to amend the petition so as to challenge the subsequent order dated 11th November, 2024 whereby the right of the petitioner/defendant to give evidence has been forfeited.
4. The genesis of this petition is in a matrimonial dispute. The respondent-husband has filed a petition for nullity of marriage.
5. By the impugned order dated 18th April, 2024, the learned Civil Judge was persuaded to reject the application to set aside the “no cross order” which was, in effect, the third “no cross order”

passed by the Court.

6. The indolence and want of diligence on the part of the petitioner/ defendant in defending the Suit No. 205 of 2019 seems to have weighed with the trial Court in rejecting the application for setting aside the “no cross order”. The learned counsel for the respondent was justified in canvassing a submission that there have been repeated defaults on the part of the petitioner/ defendant.

7. Yet having regard to the nature of the proceedings and the outcome of such proceedings on the status of the parties, it may be expedient in the interest of justice that the suit is decided on merits after providing an effective opportunity of hearing to the parties.

8. The learned counsel for the petitioner/ defendant submits that the defendant undertakes to this Court that the defendant would proceed with the cross examination of the plaintiff on 20th January, 2025, the next scheduled date of the listing of the suit before the trial Court, and will also file an affidavit in lieu of examination in chief of the defendant within one week thereafter, if the plaintiff closes his evidence.

9. In view of the aforesaid submission and to advance the cause of substantive justice the order dated 18th April, 2024 rejecting the application setting aside the “no cross order” and the order dated 11th November, 2024 forfeiting the right of the defendant to adduce

the evidence stand set aside, subject to the following conditions :

- i) The defendant/petitioner shall pay the costs of Rs. 10,000/- to the plaintiff.
- ii) The costs be deposited in the trial Court on or before 15th January, 2025.
- iii) The defendant/petitioner shall cross examine the plaintiff on 20th January, 2025 or on any other adjourned date, if the trial Court finds itself unable to record the cross examination of the plaintiff on 20th January, 2025.
- iv) In any event, the defendant shall not seek any adjournment on any count whatsoever to conduct the cross examination of the plaintiff.
- v) In the event the plaintiff closes his evidence, after his cross-examination, the defendant shall file affidavit in lieu of examination in chief of the defendant within a period of one week thereafter. If the plaintiff does not close the evidence and examines further witnesses, the defendant shall also cross examine the rest of the witnesses of the plaintiff without seeking any adjournment, and shall file affidavit in lieu of examination in chief within one week of the closer of the evidence of the plaintiff, if the defendant wishes to adduce the evidence.

10. Necessary amendment be carried out forthwith.
11. Petition disposed.

(N. J. JAMADAR, J.)