



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

Writ Petition No.3011/2025

Mrs. Smita V Suresh

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.Y. Mandpe, Advocate for petitioner.
Ms. Harsha Joshi, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 14-01-2026.

Heard learned Counsel for the petitioner.

2. The petitioner wife has challenged order dated 04-04-2025 passed by the Family Court, Nagpur, rejecting the application for setting aside the order below Exhibit-01 of 'no evidence' of the respondent wife.

3. The controversy arises from the petition for divorce filed by the husband under Section 13(i-a) of the Hindu Marriage Act for dissolution of marriage. In the said petition, wife has appeared and filed her written statement, however, evidence was not led and therefore the Family Court passed order on Exhibit-01 about 'no evidence' of the respondent. Thereafter, the wife filed application dated 03-03-2025 (Exhibit-88) and prayed for setting aside the order of 'no evidence' with a request for an opportunity to lead evidence. This application was opposed by the husband and the Family Court rejected the said application by a one line order dated 04-04-2025 observing that :-

*“Respondent present, but has failed to file evidence affidavit.
No adjournment application. Therefore application is rejected.”*

4. It is pointed out that the wife has filed written statement and is ready to contest the petition on merits. Learned Counsel for the petitioner also invited attention to the evidence on affidavit dated 04-04-2025 sworn by the wife which was to be filed in the divorce petition. On the basis of this, he submits that the wife is entitled for an opportunity to lead evidence so that the matter is decided on merits. In this regard, learned Counsel for the respondent/husband submits that the wife has unnecessarily prolonged the litigation and despite several opportunities had failed to lead evidence. She also invites attention to the defect and irregularity in the affidavit dated 04-04-2025 by pointing out the discrepancy in the number allotted to the notarised document. Learned Counsel for the petitioner is not in a position to give any explanation about the discrepancy.

5. Be that as it may, by the impugned order the petitioner wife is deprived from leading evidence in the matrimonial proceedings. It is trite law that the litigations should be decided on the basis of merits and the parties be afforded an opportunity to lead evidence on merits. The impugned order dated 04-04-2025 passed by the Family Court is unseasoned, cryptic and unsustainable in law.

6. Having regard to the entire controversy, the petitioner wife needs to be granted an opportunity to lead evidence. In view of the apparent discrepancy and irregularity in Notarized document of evidence on affidavit dated 04-04-2025, it is directed that the petitioner wife should place on record before the Family Court a fresh evidence on affidavit duly

sworn before the competent authority, however, subject to costs of Rs. 10,000/- to be paid by the petitioner to the respondent.

7. It is pointed out that the petitioner has already deposited an amount of Rs.10,000/- in this Court in accordance with order dated 19-06-2025 passed by this Court and the respondent is therefore entitled to withdraw the said amount.

8. Having regard to the fact that the parties are contesting the litigation since 2020, the petitioner-wife is directed to expeditiously lead evidence without seeking adjournments so that the litigation is decided at the earliest.

9. In view of this, writ petition is disposed of.

(Prafulla S. Khubalkar, J.)