

MHBU040000662020



**Order Below Exh.52**

(Passed on 19/10/2023)

Petitioner Nikunj Ramakant Harlalka has filed present petition under section 25 of the Guardian & Wards Act, 1890, for the return of custody of minor children Advit Harlalka, aged 07 years and Saashmit Harlalka, aged 02 years old against his wife respondents No.1 Prachi Nikunj Harlalka. In this petition present application is filed by the respondents to set aside the no cross examination order passed below Exh.45 on 12.4.2023.

2. Petitioner has resisted the application by filing say at Exh.53.

3. Shri K.C. Bhate, learned advocate for the respondents has submitted that after filing the affidavit of examination in chief by the petitioner, the respondents had filed application Exh.47 for striking out certain portions of the purported affidavit of examination in chief of petitioner. He submitted that petitioner has filed reply on 7.12.2022 vide Exh.48 and matter was posted for hearing on Exh.47 on wards 6.1.2023. He submitted that matter was kept for hearing on Exh.47, but on 12.4.2023 petitioner has filed Pursis Exh.50 and Court has

passed order of no cross examination against respondents. He submitted that on same day respondents filed application for setting aside no cross order. He submitted that there was no delay on the part of respondents and they should get opportunity for cross examination of petitioner. Hence he urged to allow the application.

4. On the other hand, Mr. Ashwin Duggal learned advocate for the petitioner has submitted that as per order of the Hon'ble High Court, present matter is time bound matter. The respondents are delaying the hearing of the matter. He submitted that there are no ground to set aside the no cross examination order. Hence he urged to reject the application and issue summons to the further witnesses of petitioner.

5. I have considered the submissions of both sides. Perused the application, say, Roznama and proceeding of this case.

6. The record and proceeding shows that petitioner has filed this petition under section 25 of the Guardian and Wards Act, 1890 for return the custody of minor children. The respondents appeared and filed written statement. Thereafter, issues framed on 19.7.2022 vide Exh.42. Petitioner filed his affidavit of examination in chief vide Exh.45 on 29.9.2022 and matter was posted for further chief examination and cross examination on 2.11.2022. Meanwhile on 30.9.2022 case was taken on board in view of compliance of Hon'ble High Court order dated 12.9.2022 in Writ Petition No.3439/2020 and

again matter was posted on 2.11.2022. As per Roznama and proceeding, on 2.11.2022 respondents filed application Exh.47 for striking out certain portions of the purported affidavit of examination in chief of petitioner and matter was posted for reply of petitioner and chief examination and cross examination on 7.12.2022. Thereafter on 7.12.2022 reply filed by the petitioner vide Exh.48 and matter was posted for hearing on Exh.47 on 6.1.2023. Petitioner and respondents were absent on 6.1.2023 and the advocates for both parties were present on 6.1.2023 and matter posted for hearing on 3.2.2023. Again on 3.2.2023 both parties were absent and their advocates were present and as per their request matter posted for hearing on Exh.47 on 3.3.2023. Presiding Officer was on Child Care Leave on 3.3.2023 and matter was posted on 12.4.2023 for hearing. As per Roznama dated 12.4.2023 petitioner and his advocate were present and respondents and their advocate were absent when called out. Therefore Pursis Exh.50 is filed by the petitioner and the predecessor of this Court has passed order below Exh.45 that the witness is present since morning for cross examination however, learned advocate for other side is absent. So also opponent is absent, no application filed. Hence no cross examination order was passed. Therefore, petitioner has filed Pursis Exh.51 to issue summons to the other witnesses for their examination in chief and matter was kept for order. Roznama shows that on same day, later on respondents and their advocate were present. They filed application Exh.52 to set aside no cross examination order. From the above scenario it shows that matter was at the stage of hearing on Exh.47 on 12.4.2023, but in

view of Pursis Exh.50 filed by the petitioner, no cross examination order has been passed by predecessor of this Court. Considering above aspect, it is necessary to give opportunity to the respondents for cross examination of petitioner. If they are not permitted for cross examination of petitioner, then certainly there will be injustice against the respondents. It appears that on same day, respondents have filed application to set aside the no cross examination order. Considering above aspect it would be just and proper to set aside the no cross examination order in the interest of justice. Therefore, application deserves to be allowed. Hence I pass following order :-

**ORDER**

- 1] Application Exh.52 is allowed.
- 2] The no cross examination order dated 12.4.2023 passed below Exh.45 is hereby set aside and respondents are permitted for cross examination of petitioner.
- 3] After deciding the Exh.47, respondents shall cross examine the petitioner accordingly.
- 4] Cost in cause.

Dt.19/10/2023

((G.B.Jadhav)  
District Judge-1, Khamgaon,  
Dist. Buldhana.

5 Guardian & Wards Act Case No.2/2020  
Nikunj Harlalka V/s. Prachi Harlalka & others  
Order Exh.52

**Certificate**

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : District Judge – 1, Khamgaon, Dist. Buldana.