

MHBU040000662020

**Order Below Exh.57**

(Passed on 18/12/2023)

1. The respondents have filed present application Exh.57 praying that the petitioner be directed to comply the order Exh.47 by filing fresh affidavit of examination in chief after striking out/deleting those portion which are mentioned in the Operative part of order below Exh.47.
2. Petitioner has resisted the application by filing say overleaf the application. It is contended that petitioner is present for cross examination. Hence, application may be rejected by imposing cost of Rs.25,000/- because this matter is time bound matter as per the order of the Hon'ble Bombay High Court.
3. Mr. K.C.Bhate learned advocate for the respondents has submitted that the petitioner has not complied the order of Exh.47. He submitted that the petitioner should be filed fresh affidavit of examination in chief by striking out the portion which is beyond pleading. He submitted that if fresh affidavit is not filed then there will be complication, when matter will go in appeal. Therefore, he urged to direct the petitioner to file fresh affidavit.

4. On the other hand, Mr.Ashwin Duggal learned advocate for the petitioner has submitted that the matter is time bound matter as per the order of the Hon'ble Bombay High Court. Respondents are delaying the hearing. Hence, he urged to reject the application imposing cost of Rs.25,000/-.

5. I have considered the submissions of both sides. Perused the application as well as say. I have gone through the record and proceeding of this case.

6. The record shows that petitioner Nikunj Ramakant Harlalka has filed petition under Section 25 of the Guardian and Wards Act, 1890, for return the custody of minor respondent No.2 Avdit Harlalka, aged 07 years and respondent No.3 Saashmit Harlalka, aged 02 years old against his wife respondent No.1 Prachi Nikunj Harlalka. After appearance of respondents they filed written statement. The issues were framed. Petitioner has filed his affidavit of examination in chief vide Exh.45 on 12.4.2023 in which some portions are beyond pleading. Therefore, respondents had filed application Exh.47 praying that some portion of affidavit of examination in chief are beyond pleading and it may be strike out. Said application was allowed as per prayer. It is ordered that the portion referred in application Exh.47 regarding in Para No.2, 7, 45 & 65 of the affidavit Exh.45 of the petitioner shall be strike out and respondents are not necessary to cross examine on that point.

7. As while passing order below Exh.47, this Court has clarified that the portion as mentioned in application Exh.47 regarding Para No. 2, 7, 47 & 65 of the affidavit Exh.45 shall strike out and therefore, there is no need to cross examine on said portion by the respondents. Hence, according to me there is no need to file fresh affidavit of evidence. At the most it can be mentioned in the affidavit that relevant portion in Para No.2, 7, 47 & 65 of the affidavit Exh.45 is strike out. Considering above aspect, as matter is time bound matter as per order of the Hon'ble Bombay High Court therefore, it is necessary to decide the main matter within stipulated time. It shows that petitioner was present for facing cross examination and ordered below Exh.47 was clear however, respondents have filed present application. The conduct of the respondents is appeared to delay in hearing. Considering the above aspect, I do not find substance in the argument advanced by the learned advocate for the respondents, but I find substance in the argument advanced by learned advocate for petitioner. Therefore, application deserves to be rejected with costs. Hence, I pass following order :-

ORDER

- 1] Application Exh.57 is rejected with cost of Rs.1000/- (Rs. One Thousand only). Payable by the respondents to petitioner on or before next date.
- 2] Petitioner shall remain present on next date and respondents shall cross examined him.

Dt.18/12/2023

Sd/-
(G.B.Jadhav)
District Judge-1, Khamgaon.

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.