

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.49 of 2026

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.....Appellant

Versus

██████████

.....Respondent

Presence:-

Mr. Pooran Singh Rawat, learned counsel for the appellant.

Mr. Shailabh Pandey, learned counsel for the respondent.

Coram : Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Per: Hon'ble Pankaj Purohit, J.

This Appeal from Order has been preferred under Section 19(1) of the Family Courts Act, 1984, assailing the order dated 05.02.2026 passed by the learned Additional Principal Judge, Family Court, Vikasnagar, District Dehradun, in Original Suit No. 95 of 2021, whereby the application filed by the respondent seeking restoration of the opportunity for her cross-examination has been allowed and the objections filed by the appellant have been rejected.

2. Facts of the case, in brief, are that a divorce suit (Original Suit No.95 of 2021) is pending between the parties before the learned Additional Principal Judge, Family Court, Vikasnagar, District Dehradun. During the course

of the trial, the respondent was required to subject herself to cross-examination. The learned Family Court granted opportunities for the said purpose; however, the respondent could not be cross-examined and, consequently, by order dated 06.08.2024, the opportunity for her cross-examination was closed. Thereafter, an application seeking restoration of the said opportunity was moved on behalf of the respondent, which came to be rejected by the learned Family Court by order dated 27.08.2024. The proceedings thereafter continued and the matter reached the stage of final hearing.

3. Subsequently, the respondent moved another application seeking restoration of the opportunity for her cross-examination. The appellant filed objections opposing the said application. Upon consideration of the material available on record and the submissions advanced on behalf of the parties, the learned Family Court, by the impugned order dated 05.02.2026, allowed the respondent's application, subject to payment of costs of ₹1,000/-, and restored the opportunity of her cross-examination by the appellant. Aggrieved by the said order, the appellant has preferred the present Appeal from Order.

4. Learned counsel for the appellant submitted that the impugned order passed by the learned Family Court is wholly unsustainable in law and has been passed in complete disregard of the settled principles governing judicial proceedings. It is contended that the respondent had been granted sufficient opportunities to subject herself to cross-examination during the course of the trial, but despite repeated adjournments, she failed to avail the same, whereupon her opportunity was rightly closed by order dated 06.08.2024. It is further submitted that the respondent had thereafter moved an application seeking restoration of the said opportunity of being cross-examined, which was duly considered and rejected by the learned Family Court by order dated 27.08.2024. The said order was never challenged before any superior forum and, therefore, attained finality. According to the learned counsel, once the earlier application seeking identical relief had been rejected, it was not open to the respondent to maintain a subsequent application for the very same relief on substantially similar grounds.

5. Learned counsel for the appellant would contend that, by entertaining and allowing the subsequent application, the learned Family Court has, in effect, reviewed and recalled its earlier

order without there being any statutory provision conferring such power. It is submitted that what could not have been done directly, has been impermissibly achieved indirectly through the impugned order. It is also argued that the conduct of the respondent throughout the proceedings reflects a deliberate attempt to delay the adjudication of the matrimonial dispute. According to the appellant, despite the closure of evidence and rejection of the earlier restoration application, the respondent continued to seek indulgence from the Court, thereby unnecessarily prolonging the proceedings. Learned counsel submits that the matter had already reached the stage of final hearing and was fixed for judgment, and therefore there existed no justification for reopening the proceedings at such an advanced stage.

6. Learned counsel for the respondent supported the impugned order and submitted that the learned Family Court has rightly restored the opportunity of her cross-examination in the interest of justice. It is contended that the impugned order is procedural in nature, does not finally determine the rights of the parties, and has been passed to ensure that the matrimonial dispute is adjudicated on merits after affording adequate opportunity to both sides. Accordingly, it is submitted that no interference with the

impugned order is called for. Reasons assigned by the learned Family court are legally sound and convincing.

7. I have considered the rival submissions advanced by learned counsel for the parties and perused the record. The controversy in the present appeal pertains to the order whereby the learned Family Court has restored the opportunity of cross-examination to the respondent, subject to payment of costs. The impugned order is essentially procedural and discretionary in nature and does not finally determine the substantive rights of the parties. It is well settled that cross-examination is an integral component of a fair trial and that an effective opportunity to test the evidence led by the opposite party is one of the basic requirements of a just adjudicatory process. The principal contention advanced on behalf of the appellant is that an earlier application seeking restoration of the opportunity of cross-examination had already been rejected and, therefore, the subsequent application seeking similar relief ought not to have been entertained. Though the said contention deserves some consideration *at first blush* but, this Court is of the view that principles analogous to *res judicata* cannot be applied with the same rigidity to interlocutory procedural orders as is applicable to

final adjudications determining the rights of the parties. The Family Court retains sufficient jurisdiction to pass such procedural orders as may be necessary to secure a fair, complete, and effective adjudication of the matrimonial dispute pending before it.

8. Family Courts are expected to be guided by the principles of substantive justice rather than technicalities of procedure. The object of the proceedings is to ensure that the dispute between the parties is decided on merits after both sides are afforded adequate opportunity to lead and test evidence. The impugned order has been passed with the aforesaid objective and merely grants a further opportunity to the respondent, subject to payment of costs. This Court further finds that no irreversible or irreparable prejudice is caused to the appellant by the grant of such opportunity. Any inconvenience occasioned on account of delay stands adequately compensated by the imposition of costs. On the contrary, refusal of an opportunity of cross-examination may result in denial of a fair hearing and may adversely affect the adjudication of the dispute on merits.

9. In the considered opinion of this Court, the learned Family Court has exercised its discretion to advance the cause of substantial

justice and to ensure that the matrimonial dispute is adjudicated on merits after affording adequate opportunity to both parties. The impugned order, therefore, does not warrant interference.

10. Accordingly, the Appeal from Order is dismissed. The order dated 05.02.2026 passed by the learned Additional Principal Judge, Family Court, Vikasnagar, District Dehradun, in Original Suit No. 95 of 2021 is affirmed.

(Pankaj Purohit, J.)
04.06.2026

(Manoj Kumar Tiwari, J.)
04.06.2026

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