

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.6203 OF 2014

Surendra Kour w/o Santoksingh
Dhariwale

..Petitioner

Versus

Rajendra s/o Rangnathrao Kulthe

..Respondent

Mrs R.D.Reddy, Advocate for petitioner
Mr P.S.Agrawal, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 4th March 2015

PER COURT

1. The order dated 11th June 2014 passed against the present petitioner - defendant rejecting an application seeking permission to cross-examine the plaintiff and her witnesses and for setting aside 'No cross' order dated 5th February 2014 and 21st February 2014 is the subject matter of this petition.

2. Mrs Reddy, learned Counsel for the petitioner would urge that the petitioner - tenant is a lady and because of her health problem, she was not in a position to contest the suit regularly. She would further urge that since trial in the suit has already begun, she assures that her client would co-operate with the learned trial Court in expeditious disposal of the suit. According to her, in the interest of justice, last opportunity to cross-examine the plaintiff and his witnesses be granted.

3. Learned Counsel for the respondent-plaintiff would urge that the petitioner's case does not call for an equity since the petitioner is

playing delaying tactics to prolong the hearing of the suit. He further urged that there was order of 'No W.S.' which was required to be set aside and subsequent thereto, the learned trial Court has passed order of 'No Cross' which was set aside twice, upon payment of costs. The petitioner is intentionally delaying the proceedings of the suit which has reached the stage of final arguments.

4. Learned trial Court, having regard to the contentions raised before it and the conduct of the petitioner - defendant, qua the reasons stated in the order has rejected the relief.

5. Prima facie, I am of the opinion that the conduct of the petitioner - defendant does not call for any equity from this Court, however, having regard to the fact that petitioner is a lady and she has assured this Court that henceforth she shall not seek any adjournment before the trial Court in the matter of cross-examine the plaintiff and his witnesses, the order dated 11th June 2014, below Exh.53 in Regular Civil Suit No.765 of 2012 passed by 7th Joint Civil Judge, Junior Division, Nanded is set aside, subject to payment of costs of Rs.10,000/- (Rs.Ten thousand), to be deposited before the trial Court within a period of one week from today. The payment of costs shall be condition precedent. The respondent - plaintiff shall be entitled to withdraw the amount of costs before the trial Court.

6. The assurance given before this Court that the petitioner - defendant shall not seek any adjournment in the matter is the basis for setting aside the impugned order.

7. Failure on the part of the petitioner – defendant in co-operating with trial Court shall entitle the Court below to proceed against the petitioner.

8. Writ Petition is allowed in above terms.

(N.W. SAMBRE, J.)

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