

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 322 OF 2015**

Ismail Ibrahim Dhariwala

..Petitioner

Vs.

Hamid Nanu Qureshi through LRS & Ors

..Respondents

**Mr. Pratap Patil i/b Mr. Manoj Kadam for the Petitioner
Ms Mugdha Patil for the Respondent Nos.1 to 6**

**CORAM : R. M. SAVANT, J.
DATE : 14th JANUARY, 2015**

P.C.

1 The order dated 30-10-2014 passed by the Learned Civil Judge Senior Division, Panvel, rejecting the application Exhibit 66/D filed by the Plaintiff for setting aside the no cross order in so far as the Defendant's witness is concerned, is taken exception to by way of the above Petition.

2 The said no cross order came to be passed against the Plaintiff in view of the fact that on the day when the Suit was fixed for cross-examination of the Defendant's witness, the Advocate for the Plaintiff and the Plaintiff were not present in Court, this happened on 13-3-2014. It seems that thereafter the Defendant has closed his evidence on 10-7-2014 and the matter was thereafter posted for arguments on 23-7-2014 and adjourned for further arguments on

28-7-2014 when the instant application Exhibit 66/D came to be filed.

3 Having regard to the fact that a party should be given an opportunity to prosecute the proceedings on merits rather than being non suited on technicalities. In my view one final indulgence is required to be shown to the Plaintiff so as to enable the Plaintiff to cross-examine the witness of the Defendant. The impugned order dated 30-10-2014 is accordingly quashed and set aside, resultantly Exhibit 66/D would stand allowed. The Plaintiff would be entitled to cross-examine the Defendant's witness. In the facts and circumstances of the case, the Plaintiff to pay costs of Rs.3000/- to the Defendants i.e. the Respondent Nos.1 to 6 herein , to be deposited within two weeks in the Trial Court. On such deposit being made, the Defendants would be entitled to withdraw the same. If the costs are not deposited, the benefit of this order would not enure to the Plaintiff and resultantly the above Petition would be deemed to have been dismissed. If the costs are deposited and the evidence is produced of the same, the Trial Court would permit the Plaintiff to cross-examine the Defendants witness. Since the Suit is to come up before the Trial Court tomorrow i.e. 15-1-2015, the respective Learned Counsel to inform the Trial Court of the aforesaid development. The Trial Court would thereafter fix the matter for cross-examination of the Defendants witness on a day convenient to the Court and the parties. It is expected of the Plaintiff that the cross-examination would be completed expeditiously and adjournment

would not be sought on any ground.

4 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]