

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2873 OF 2015

Vikram K. Dedhiya & Anr.	..	Petitioners
VS.		
Prashant M. Lengade	..	Respondent

Mr. Tanaji Mhatugade for Petitioners.
Mr. Rahul Vijaymane for Respondent.

CORAM : M. S. SONAK, J.
DATE: 20 OCTOBER 2015

P.C. :-

- 1] Rule. Rule is made returnable forthwith with consent.
- 2] Heard the learned counsel for the parties. The challenge in this petition is to the orders dated 17 June 2014 and 28 November 2014, made by the Trial Judge and the Revisional Judge respectively. By order dated 17 June 2014, the Petitioner, who was absent, was debarred from cross-examining the Plaintiff / Plaintiff's witness. By order dated 28 November 2014 the Revisional Court has declined to interfere with the order dated 17 June 2014, on the ground that the Petitioner should have applied to the Trial Court for recall.
- 3] The approach of the Revisional Court is correct. There was

no reason for the Petitioners to rush with the institution of the revision petition, even before, applying to the Trial Court for recall of order dated 17 June 2014. However, remand of the matter to the Trial Court would entail further delay. It is in these circumstances, that the present petition is entertained.

4] Although, no sufficient explanation is provided by the Petitioner as to why either he or his Advocate could not remain present before the Trial Court on 17 June 2014, the order debarring cross-examination is rather harsh in the facts and circumstances of the present case. Therefore, subject to payment of substantial costs, yet another opportunity deserves to be granted to the Petitioners. The learned counsel appearing for the Respondent has however opposed the grant of any further opportunity to the Petitioners. The learned counsel has submitted that on account of default on the part of the Petitioners, further hearing in the suit has virtually been derailed by over a fifteen months. Although, it is correct, the ends of justice will be met if costs are imposed upon the Petitioners.

5] Accordingly, the orders dated 17 June 2014 and 28 November 2014 are set aside. The Trial Court will grant the Petitioners opportunity to proceed with the cross-examination.

Further, the Trial Court will endeavour to dispose of the Civil Suit as expeditiously as possible and in any case within a period of one year from today. This opportunity is granted subject to the Petitioners paying costs of Rs.15,000/- (Rupees Fifteen Thousand) to the Respondent.

6] The Petitioners have already deposited Rs.10,000/- by way of security towards costs of this Court. The Registry to transmit within two weeks from today, this amount to the Court of Joint Civil Judge, Senior Division, Kolhapur to the account of Regular Civil Suit No. 1912 of 2012. The Petitioners to deposit further amount of Rs.5,000/- before the Trial Court within a period of two weeks from today. The Respondent shall be entitled to withdraw the amount of Rs.15,000/- from the Trial Court unconditionally.

7] Rule is made absolute to the aforesaid extent.

8] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)