

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2226 OF 2015

Shri. Ramesh Anantrao Bulbule

.. Petitioner

Versus

Dr. Nitin Vitthal Thorave

.. Respondent

**Shri. R. S. Apte, Senior Advocate i/by Shri. Abhijit B. Kadam, for the
Petitioner.**

CORAM : R.M. SAVANT, J.

DATE : 12th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the orders dated 17.02.2014, 16.06.2014 and 09.02.2015 passed by the Learned Joint Civil Judge, Senior Division, Kolhapur, by which order the applications Exh.71, 72 and 73 filed in Special Civil Suit No.49 of 2012 came to be rejected.

2. The issue which arises in the above Petition is whether a further opportunity to the Petitioner i.e. the Defendant to cross-examine an independent witness i.e. officer of Janata Sahakari Bank Ltd. should be granted. It is required to be noted that the suit in question being Special Civil Suit No.49 of 2012 has been filed by the Plaintiff i.e. Respondent herein for a mandatory order that the Petitioner herein i.e. Defendant to the suit be directed to hand over possession of the suit premises being plot

No.198 in the Hind Co-operative Housing Society, Ruikar Colony, Kolhapur. The gravamen of the allegation in the suit is that the Defendant forcibly is dispossessed. It is the case of the Plaintiff that he was put in possession pursuant to an auction which was conducted by the said Janata Sahakari Bank Ltd. The witness in question of whose cross-examination has been partly conducted is an official of the said Janata Sahakari Bank Ltd. It seems that the cross-examination was partly conducted on 16.01.2014 and 23.01.2014 and thereafter was fixed on 16.02.2014. It appears that advocate Firozkhan G. Pathan who was conducting the cross-examination was granted leave from 15.02.2014 to 22.02.2014. However, the Vakalatnama filed on behalf of the Defendant was a joint Vakalatnama of three advocates which include Advocate Firozkhan G. Pathan. On 17.02.2014, though the above suit was called out four to five times in between 11 a.m. to 12.30 p.m. on the said day no appearance was put up on behalf of the Defendant. Thereafter it seems that at around 1.10 p.m. an application was filed by the Defendant seeking adjournment on the ground of the leave granted to advocate Firozkhan G. Pathan. The said application was rejected by the Trial Court on the ground that there are other two advocates who are on record and since the witness is that of Janata Sahakari Bank Ltd., arrangement for his cross-examination ought to have been made on behalf of the Defendant, though leave was granted to advocate Firozkhan G. Pathan. The Trial Court accordingly passed a "No

cross” order against the Defendant, setting aside of which is sought by the applications Exh.72 and Exh.73 by the Defendant. The said applications have also been rejected by the Trial Court having regard to the aforesaid facts, where the independent witness i.e. official of the Janata Sahakari Bank Ltd. had remained present on four to five occasions to facilitate his cross-examination and in spite of the same his cross-examination was not completed by the Defendant. The Trial Court observed that the Defendant seems to be unnecessarily harassing the witness by not completing his cross-examination though the said witness had remained present on four to five occasions in the Trial Court. In the context of the suit being filed for a mandatory order directing the Defendant to hand over possession, the conduct of the Defendant in not completing the cross-examination leads to a conclusion that the Defendant seems to be interested in prolonging the matter as otherwise it is impossible to comprehend that the cross-examination of an independent witness is not completed with the despatch that is usually required when the witness is an independent witness. In my view, a Writ Court cannot obviously aid such a litigant who in spite of opportunities has failed to take them for the reasons best known to him. In that view of the matter, the exercise of the Writ Jurisdiction is not warranted. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]