

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6483 OF 2014**

Pandurang Dattatray Bhenki

Petitioner

Vs

Ganesh Shankar Badave, since
deceased through L.Rs
1a) Smt Saraswatibai Ganesh
Badave and Ors

.. Respondents

Mr. Sandeep S. Salunkhe , Advocate for the petitioner.
Mr. Ajay A. Joshi, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 03/07/2015

PC:

1. Heard Mr. Sandeep Salunkhe, learned counsel for the petitioner and Mr.Ajay Joshi, learned counsel for respondents no.1A to 1C at length.

2. Mr. Salunkhe seeks leave to delete respondent no.2 as no relief is claimed against respondent no.2 and is a formal party. On the motion made by Mr. Salunkhe, respondent no.2 is deleted.

3. Rule. Mr.Joshi waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant no.1', has challenged the Judgment and order dated 5.3.2014 passed by the learned 5th Jt. Civil Judge, Jr.Dn., Pandharpur below Exhibit 134 in R.C.S.No.127 of 1997. By that order, the learned trial

Judge rejected the application filed by defendant no.1 for setting aside 'no cross order' passed against him.

5. The learned trial Judge has recorded reasons in paragraphs 3 and 4 of the impugned order for dismissing the application. The learned trial Judge observed that several opportunities were given to defendant no.1 for cross-examination of the plaintiff's witness. The matter was adjourned subject to imposition of costs on various dates. Despite that, defendant no.1 did not cross examine plaintiff's witness and eventually 'no cross order' was passed.

6. Mr. Joshi submits that the defendant has not paid the costs imposed by the learned trial Judge. Mr. Salunkhe states that defendant no.1 will pay the costs as ordered by the trial Court in addition to costs of Rs.5000/- for setting aside the impugned order. He assures that defendant no.1 will cross examine plaintiff's witness without seeking any undue adjournments and at the earliest.

7. In my opinion, having regard to the fact that defendant no.1 is willing to pay costs of Rs.5000/- over and above awarded by the trial Court as also he has further agreed to pay costs imposed by the trial Court. Interest of justice demands that defendant no.1 should be given an opportunity to cross examine plaintiff's witness subject to conditions. Hence, Petition is disposed of in the following terms:

- (i) Impugned order dated 5.3.2014 is set aside and application Exhibit 134 stands allowed.
- (ii) Mr. Joshi states that the plaintiff's witness will remain present on 5.8.2015 so as to finish cross-examination at the hands of defendant no.1.
- (iii) Defendant no.1 shall complete cross examination as expeditiously as possible without seeking any undue adjournments.
- (iv) Defendant no.1 shall pay to the plaintiff or deposit in the trial Court the costs as imposed by the trial Court as also Rs.5000/- by this Court within two weeks from today. Payment of costs is a condition precedent. If the costs are not paid or deposited in the trial Court within two weeks from today, the impugned order shall stand revived without further reference to the Court.
- (v) Rule is made absolute in the aforesaid terms.

(R.G.KETKAR, J.)