

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

WRIT PETITION NO.7855 OF 2015

Mr. Vivek Vijay Gupta and another

.. Petitioners

Versus

Soham Metal Pvt. Ltd.

.. Respondent

Ms. Kranti S. S. Anand, for the Petitioners.

Mr. Sandeep Ghogare a/w Mr. R. A. Tekale, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 07th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order 12.06.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order the Application Exh.60 filed by the Defendants i.e. the Petitioners herein for recall of the witness PW-1 came to be rejected.

2. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that a host of documents numbered as Exh.23 to Exh.57 were exhibited on 17.11.2014 and thereafter the matter was set down for the cross-examination of the PW-1. The suit was thereafter shown on various dates between 08.01.2015 to 07.05.2015 i.e.

the date antecedent to the date of the impugned order. On the said dates as the Roznama discloses at times the adjournment was sought on behalf of the Plaintiff and at times the advocate of the Defendant and the Defendant were absent. It is not a case that since post the exhibition of the documents on 17.11.2014 i.e. from 08.01.2015 till 07.05.2015 the Defendant is continuously unrepresented. May be on some particular dates the Defendant was not represented before the Trial Court so as to conduct the cross-examination of the Plaintiff's witness PW-1. The question that begs an answer is therefore whether the said fact justifies the passing of no cross-examination order against the Defendant. The answer has to be in the negative. It is well settled that there should be a fair trial and parties should be given a proper opportunity to prosecute the proceedings. It is on the said basis that a final opportunity is required to be extended to the Defendant to cross-examine the PW-1. The impugned order dated 12.06.2015 is accordingly quashed and set aside. The Application Exh.60 would stand allowed. The following directions are issued :-

- I) The Plaintiff would keep the witness present for cross-examination on the date fixed by the Trial Court. Since the parties are to appear before the Trial tomorrow i.e. on 08.09.2015, the Trial Court to fix the date for cross-examination either this week or within ten days from date.

II) The cross-examination of the witness PW-1 once commenced would be continuous till it is completed and would be conducted on day to day basis.

III) In the facts and circumstances of the case the Petitioner to pay costs of Rs.10,000/- to the Plaintiff. The Petitioner to deposit a further amount of Rs.5000/- in this Court within one week and produce evidence before the Trial Court of the deposit of the said costs. The said amount of Rs.5000/- would be in addition to the amount of Rs.5000/- which according to the Learned Counsel for the Petitioners is already deposited in this Court. Thereafter the Respondent No.1/ Plaintiff would be entitled to withdraw the total amount of Rs.10,000/- which would be lying in deposit in this Court. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]