

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8011 OF 2014

M/s. Bhatt Doshi & Co.	..	Petitioner
VS.		
M/s. American Express Bakery	..	Respondents

Mr. Khan Javed Akhtar for Petitioner.
Mr. V. P. Sawant with Ms Harshal Manik i/b. Rustamji & Ginwala for Respondents.

CORAM : M. S. SONAK, J.
DATE : 24 AUGUST 2015

P.C. :-

1] This petition challenges orders dated 11 December 2013 and 8 July 2014 made by the Trial Court and the Revisional Court declining to set aside "*no cross order*" made against the petitioner, who is defendant in RAE Suit No. 73/101 of 2006. The two Courts, after reference to the dates in the roznama, have held that on the occasions prior to the making of the impugned orders, "*no cross orders*" came to be passed as the petitioner was not proceeding with the cross-examination for no justifiable reason. However, upon motion of the petitioner, such orders were recalled. On one occasion, the order was recalled on imposition of costs of Rs.500/-/ Despite all this, once again, the petitioner failed to proceed with the cross-examination on 2 September 2013 and therefore, "*no cross order*" was made by the Trial Court. By order dated 11 December

2013, the Trial Court declined to recall its “*no cross order*” by observing that the petitioner has not at all been diligent in the matter and appears to be bent upon protracting the trial and delaying hearing of the suit. The Revisional Court, by its order dated 8 July 2014 has dismissed the petitioner's revision, by making observations upon the conduct of the petitioner and imposing costs of Rs.10,000/-.

2] There is really no good ground made out to interfere with the impugned orders. However, the learned counsel for the petitioner, Mr. Akhtar Khan has made a plea that if one chance is granted to the petitioner, then the petitioner will proceed with the cross-examination without any excuse whatsoever. Mr. Akhtar Khan on basis of instructions from the petitioner also volunteered to pay costs of Rs.25,000/-.

3] In my judgment, considering the assurance of the petitioner, it would be appropriate to grant one more chance to the petitioner, notwithstanding the petitioner's conduct in the past. However, the offer of costs in an amount of Rs.25,000/- is too meagre in the peculiar facts and circumstances of the present case. The two Courts, have rightly commented upon the conduct of the petitioner, in the matter of proceeding with the cross-examination. The two

Courts have observed that the petitioner suffers “*no cross orders*” and thereafter file applications for recall of the same. Even after the orders are recalled, the petitioner does not proceed with the cross-examination. In this manner, the petitioner has delayed the trial by at least three years. Therefore, if the petitioner seriously desires, yet another opportunity to proceed with the cross-examination, the same shall be subject to the petitioner paying to the respondent, costs of Rs.1,00,000/- (Rupees One Lac) on or before 4 September 2015. Further, the petitioner shall have to proceed with the cross-examination on 4 September 2015, which is the date scheduled before the Trial Court, without, on the said date giving any excuse. In case, costs of Rs.1,00,000/- (Rupees One Lac) are not paid, then the petitioner, does not really deserve any indulgence in this matter, particularly in the light of the facts as recorded by the two Courts and the conduct of the petitioners.

4] Accordingly, this petition is disposed of with the following order :

(A) The petitioner to deposit costs of Rs.1,00,000/- (Rupees One Lac) before the Trial Court on or before 4 September 2015, which is the date scheduled before the Trial Court;

(B) The respondents / its witnesses, to remain present on 4 September 2015 before the Trial Court. If the costs are deposited,

the Trial Court to permit the petitioner to proceed with the cross-examination of the respondents / its witnesses. Under no circumstances, shall the petitioner apply for any adjournment on the said date;

(C) In case, the costs are not deposited, on or before 4 September 2015 i.e. before the matter is called out for cross-examination, this petition shall be deemed to have been dismissed. The two impugned orders shall be deemed to have been upheld by this Court. The Trial Court shall then ensure that the petitioner pays the costs awarded by Revisional Court. However, if costs are deposited and the petitioner proceeds with the cross-examination on 4 September 2015, then the impugned orders shall be deemed to have been set aside;

(D) Once the costs are deposited before the Trial Court, the respondents shall be at liberty to withdraw the same unconditionally;

(E) The parties are at liberty to produce authenticated copy of this order before the Trial Court.

(F) Rule is made absolute to the aforesaid extent.

(G) All concerned to act on basis of authenticated copy of this order.