

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

WRIT PETITION NO.10996 OF 2014

Anmol Kumar Jha : Petitioner
versus
Ishwar Chandra Pandey and anr. : Respondents.

Mr. Anil Joshi i/by Ms. Sandhya Mailagir for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 12th January 2015

P.C.

1 The orders dated 6/2/2014 and 6/8/2014 passed by the learned 3rd Joint Civil Judge, Senior Division, Thane are taken exception to by way of the above Petition.

2 In so far as the first order dated 6/2/2014 is concerned, the said order sets aside the “No Cross Order” which was passed against the Defendants. In so far as the second order dated 6/8/2014 is concerned, the said order rejects the application (Exhibit 75) filed by the Petitioner – original Plaintiff. The suit in question being Special Civil Suit No.242 of 2012 has been filed under Section 6 of the Specific Relief Act, 1963 for possession of the suit premises. It appears that a “No Cross Order” came to be passed against the Defendants as the Defendants had failed to cross examine the witness of the Plaintiff. The said “No Cross Order” came to be set aside. However, inspite of the same, the advocate for the Defendants failed to cross examine the Plaintiff's

witness and therefore once again a “No Cross Order” came to be passed. It is thereafter that the application on which the order dated 6/2/2014 came to be passed was filed by the Defendants for setting aside the “No Cross Order”. The said Application which is annexed to the above Petition at Exhibit-C came to be allowed and the “No Cross Order” came to be set aside on the payment of Rs.5000/- as costs. It seems that out of the said amount of Rs.5000/-, an amount of Rs.1500/- was paid to the Plaintiff which the Plaintiff had accepted. The learned counsel for the Petitioner/Plaintiff states that the same was accepted under protest. However, thereafter inspite of the Defendants and their counsel being present, the Plaintiff's witness was not available.

3 The Plaintiff thereafter filed an application (Exhibit 75) for taking up the matter for final arguments without upholding the opportunity to the Defendants to cross examine the PW No.1 or adducing their evidence. The said relief was sought on the basis that on three earlier occasions, the “No Cross Order” has been passed against the Defendants.

4 The Trial Court rejected the said Application (Exhibit 75) on the ground that the “No Cross Order” was set aside on the pains of imposition of costs of Rs.5000/- out of which the Plaintiff had accepted the amount of Rs.1500/- which was tendered to the Plaintiff. The Trial Court therefore observed that the Plaintiff cannot be heard to make submissions in respect of

the said order. The Trial Court has also dealt with the judgment which was cited on behalf of the Petitioner i.e. the Judgments in Civil Appeal Nos.7554 of 2009 and 7555 of 2009. The Trial Court distinguished the facts in the said case from the facts in the instant case as in the instant case the “No Cross Order” was set aside on the payment of costs of Rs.5000/- out of which the amount of Rs.1500/- was accepted by the Plaintiff. In view thereof, the Trial Court was of the view that the facts were clearly distinguishable, and the said judgment of the Apex Court therefore would have no application. The Trial Court has accordingly rejected the Application (Exhibit 75) and whilst rejecting the same, had cautioned the Defendant from adopting delay in tactics.

5 In my view, both the orders i.e. the order dated 6/2/2014 and 6/8/2014, having regard to the aforesaid facts, merit no interference. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]