

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

WRIT PETITION NO.11157 OF 2012

**Shri. Tulshiram Appa Kapse,)
Adult aged 60 years, Occu:-Agriculturist,)
Residing at Muthawali Budruk,)
Taluka Roha, Dist:-Raigad. .. Petitioner**

Versus

**Shri. Sumant Vishnu Pashilkar,)
Adult, aged ____years, Occu:-Agriculturist,)
Residing at Dhatav, Taluka Roha,)
Dist:-Raigad. .. Respondent**

**Mr. K. S. Dewal i/by Roshan Tanna, for the Petitioner.
None for the Respondent.**

**CORAM : R.M. SAVANT, J.
DATE : 20th FEBRUARY, 2015**

ORAL JUDGMENT

1. In the above Petition, notice for final disposal was issued on 24th June, 2014. Office note indicates that the sole Respondent has been served, however no appearance is put up on behalf of the said Respondent, hence considering the challenge raised, Rule, made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the orders dated 06.09.12, 10.09.2012 and 03.10.2012, by which orders the applications filed by the Plaintiff's for their witness being cross-examined by the Defendant came to be rejected. The last rejection is by the order dated 03.10.2012 is on the ground that a similar application Exh.109 was rejected earlier by order dated 10th September, 2012. The cause for passing the said order was that on the day when the Plaintiff's witness was to be cross-examined i.e. on 6th September, 2012, he was not present in Court. It appears that on 10th September, 2012 i.e. immediately three days thereafter an application came to be filed that the Plaintiff would keep his witness present in Court and witness be cross-examined by the Defendant. The reason why the Plaintiff's witness did not remain present on 06.09.2012 was mentioned in the application and the reason was to the effect that the said witness of the Plaintiff had undergone an eye operation. The said reason did not commend acceptance to the Trial Court which accordingly rejected the application by its order dated 10.09.2012. Thereafter the Plaintiff once again filed an application Exh.113 that the Plaintiff is ready and willing to keep his witness present in Court and that the Defendant should be directed to cross-examine the said witness. The said application came to be rejected by the impugned order dated 03.10.2012. In my view, the Trial Court has taken a highly technical view

of the matter and has rejected the application Exh.113 filed by the Plaintiff for his witness being cross-examined by the Defendant. If the Trial Court has found that there was some default on the part of the Plaintiff in keeping his witness present on 06.09.2012, the Trial Court ought to have allowed the application subject to imposition of costs on the Plaintiff. It is well settled that the party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. The endeavour is to see to it there is a fair trial as a result of which proper adjudication of the lis between the parties takes place. In my view, the impugned orders dated 06.09.2012, 10.09.2012 and 03.10.2012 are required to be quashed and set aside and are accordingly quashed and set aside. Resultantly, the cross-examination of the witness of the Plaintiff is directed to be carried out by the Defendant. The Plaintiff to keep his witness present in the Trial Court on 4th March, 2015. The Trial Court to fix the schedule as per its convenience for completing the cross-examination of the said witness. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute. In the facts and circumstances of the case, the Plaintiff to deposit costs of Rs.1000/- with the Maharashtra State Legal Aid Fund within two weeks from date.

[R.M. SAVANT, J]