

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5171/2014

Dr. Namdeo s/o Natthusa Bijwe

..Versus..

Shankarrao s/o Natthusa Bijwe and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 26.6.2015

Heard Shri Rohit Joshi, the learned advocate for the petitioner/original defendant no.1 and Shri J.J. Chandurkar, the learned advocate for the respondent no.1/original plaintiff. None appears for the respondents 2 to 13. These respondents are the original defendants 2 to 11 and they are not concerned with the controversy involved in this petition. This Court by the order dated 23rd September, 2104 has issued notice for final disposal and the respondents 2 to 13 have chosen not to put in appearance and, therefore, I am proceeding further in the matter.

The defendant no.1 has filed this writ petition challenging the order passed by the trial Court rejecting the application filed by the defendant no.1 seeking adjournment to cross-examine the plaintiff. The reason given in the application seeking adjournment was that the advocate representing the defendant no.1 was not well and was required to go out of Amravati for medical investigation. The learned trial Judge rejected the application. An application seeking review of the order passed by the learned trial Judge was filed which is rejected. The petitioner being aggrieved in the matter, has filed this writ petition.

Without going into the genuineness of the reasons given by the defendant no.1 for seeking adjournment, in my view, the interests of justice would be sub-served by passing the following order :

The impugned orders are set aside.

The defendant no.1 is permitted to cross-examine the plaintiff.

The learned advocate for the petitioner undertakes to cross-examine the plaintiff on the next date of the proceedings fixed before the trial Court.

It is clarified that this order is being passed on the assurance given on behalf of the defendant no.1 that he will cross-examine the plaintiff on the next date. If the defendant no.1 fails to cross-examine the plaintiff on the next date, the learned trial Judge shall proceed in the matter without considering any request on behalf of the defendant no.1 for adjournment.

The defendant no.1 shall pay costs quantified at Rs.5,000/- (Rs. Five Thousand Only) to the plaintiff and produce the receipt on the record of the trial Court on the next date, failing which the learned trial Judge shall pass appropriate orders in the matter.

The petition is allowed in the above terms.

JUDGE

Tambaskar.