

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

955 WRIT PETITION NO. 1640 OF 2016

PRASHANT RAJABHAU CHANDRAKANT SHERKAR
VERSUS
VIJAYKUMAR RAMCHA DRA SHERKAR AND OTHERS

...
Advocate for Petitioners : Nagargoje A.N.
Advocate for Respondent 1 : S.S. Kulkarni
...

CORAM : T.V. NALAWADE, J.
DATED : 7th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 100 in Special Civil Suit No. 43/2011 by the Civil Judge, Senior Division, Osmanabad. Both the sides are heard.

2. The aforesaid suit is filed by present respondent No. 1 for relief of compensation against the petitioner. It is the case of respondent, plaintiff that petitioner had set on fire his standing sugarcane crop and due to that loss was caused to his fruit bearing trees and tick wood trees and he sustained loss. Compensation of Rs. twenty lakh is claimed in the suit. It appears that examination in chief of the plaintiff was over and to some extent, he was cross examined. But, no interest was shown by the present petitioner to further cross examine the plaintiff and to make progress in the matter. Due to this approach,

initially no cross order was made. But for giving opportunity to the petitioner, witness was again recalled and one opportunity was given to the present petitioner. This opportunity was not availed and his counsel also remained absent and so no cross order was made by the Trial Court. This order dated 4.1.2013 was sought to be set aside in the application, Exh.100 and due to the aforesaid conduct of the petitioner, the Trial Court refused to set aside the order.

3. In view of the nature of claim made in the suit, this Court holds that opportunity needs to be given to the petitioner, defendant to take decision on merits. Most of the evidence in such case will be on the basis of circumstances and oral evidence will play important part in the decision of the matter. In view of these circumstance, this Court holds that opportunity needs to be to the present petitioner, subject to payment of cost of Rs. 10,000/- (Rupees ten thousand) in the Trial Court by the petitioner to the respondent, plaintiff on or before 22.12.2016. If the amount is deposited on or before the aforesaid said in the Trial Court, it is to be presumed that the application for setting aside the order of no cross is set aside and opportunity is to be given to cross examine the plaintiff and his witnesses. If the amount is not deposited on or before the aforesaid date, it is to

be presumed that present proceeding is dismissed. Parties are to appear before the Trial Court on 22.12.2016. Petition is disposed of accordingly.

Authenticated copy is allowed to both the sides.

[T.V. NALAWADE, J.]

SSC/