

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

39 WRIT PETITION NO. 2649 OF 2015

**RASHTRIYA VIDNYAN MANCH, JALGAON THROUGH TRUSTEES GITA
SHARMA AND OTHERS**

VERSUS

THE ZILLA PARISHAD, JALGAON AND OTHERS

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**Advocate for Petitioners :Mr. V. P. Latange Adv. h/for
Mr. Talhar Ajay G.**

**Advocate for Respondent No.1:Mrs. Chaitali P. Kutti
Choudhari**

AGP for Respondents 2, 3, 5 & 6: Mr. G. O. Wattamwar

Advocate for Respondent No.4 :Mr. S. B. Deshpande

CORAM : V. K. JADHAV, J.

DATE : 15th February, 2016

PER COURT :

1. Heard finally by consent of the parties at admission stage.

2. The petitioners/original plaintiffs instituted the suit bearing RCS No.242/2004 for declaration and injunction. Respondent No.1/Original Defendant No.1 - Zilla Parishad, Jalgaon has filed Application Exhibit 221 for setting aside the "No Cross" order passed against it. The learned 2nd Joint Civil Judge, Senior Division, Jalgaon, by the impugned order dated 06.01.2015 below Exh. 221, allowed the said application. Hence this writ petition.

3. The learned counsel for the petitioners submits

that the suit is pending since 2004 and right from 20.04.2013, till the "No Cross" order came to be passed, defendant No.1 and its counsel continuously remained absent. The learned counsel submits that in application Exh. 221, along-with prayer for setting aside "No cross" order, it is also prayed that all the previous orders may also be set aside. The learned counsel submits that the said application is without any verification and even not supported by any affidavit.

4. The learned counsel for Respondent No.1 Zilla Parishad, Jalgaon submits that the counsel on the panel of the Zilla Parishad, Jalgaon has submitted an application for his discharge in the said matter. However, the same was not processed and accordingly, the delay was occurred in appointing new advocate for representing case on behalf of the Zilla Parishad, Jalgaon in the said suit. The learned counsel submits that the trial court has allowed the said application for setting aside no cross order on cost and accordingly, the respondent No.1/defendant No.1 has deposited the said cost before the trial court.

5. I have also heard the learned counsel appearing for respondent No.4 and learned AGP appearing for respondent Nos. 2, 3, 5 and 6.

6. The trial court has set aside the order of "No cross" passed against defendant No.1 in order to decide real controversy between the parties and to ensure fair trial. I do not find any fault in the impugned order to the extent of setting aside "No cross" order. However, the trial court has allowed the application Exh. 221 in toto. Defendant No.1, in addition to setting aside "No cross" order, has also prayed in application Exh.221 for setting aside all the previous orders passed against respondent No.1/defendant No.1. The same is not at all permissible. I hold that the order passed by the trial court dated 06.01.2015 is restricted to the extent of setting aside the "No cross" order and to that extent, application Exh. 221 is allowed.

7. With the above observation, writ petition is disposed of. In the circumstances, there shall be no order as to costs.

8. The trial court shall expedite the hearing of the suit which is pending since 2004 and dispose of the same as expeditiously as possible, preferably within a period of one year from the date of this order.

(V. K. JADHAV, J.)

JPC