

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

920 WRIT PETITION NO. 5313 OF 2015

RAJENDRAKUMAR MADANLAL KALA AND ANOTHER
VERSUS
JEEJABAI NANA PAGORE AND OTHERS

...
Advocate for Petitioners : Neha B. Kamble h/f. Adwant S.V.
Advocate for Respondent 1 : A.P. Bhandari
Advocate for Respondents 4 & 5 : Amol Joshi h/f. Rajendra
Deshmukh
...

CORAM : T.V. NALAWADE, J.
DATED : 14th October, 2016.

ORDER :

1. The petition is filed to challenge the orders made by the learned Civil Judge, Senior Division, Aurangabad in Special Civil Suit No. 160/2001. Both the sides are heard.

2. The petitioners is a plaintiffs and suit is filed for relief of specific performance of contract. It appears that on many occasions, the matter was adjourned at the instance of plaintiffs. The evidence of plaintiffs is closed and the defendants has started his evidence. It appears that on the date fixed for cross examination of defendant, nobody turned up for plaintiffs to take cross examination of defendant. So, the matter was adjourned to next date and thereafter also nobody remained present and so, the order of no cross was made against the plaintiffs. The

application was moved for plaintiffs by the counsel of plaintiffs in the Trial Court and personal difficulties were mentioned for getting the order of setting aside the no cross order and for permission to take cross examination. This application was also rejected in view of the previous conduct of the plaintiffs.

3. The learned counsel for petitioners, plaintiffs submitted that the counsel is taking the blame to himself and party should not be made to suffer due to fault of the counsel. In view of this circumstance and the nature of relief claimed, this Court holds that last opportunity needs to be given to the plaintiffs.

4. So, the petition is allowed, subject to payment of cost of Rs. 20,000/- (Rupees twenty thousand) by plaintiffs to defendant No. 1. Cost amount is to be deposited prior to 24.10.2016 in the Trial Court. Only after depositing of the cost amount, the cross examination of defendant is allowed and subject to the aforesaid condition, the aforesaid order made by the Trial Court is hereby set aside. Parties are to appear before the Trial Court on 24.10.2016. On that day, defendant to remain present and the counsel of plaintiffs to complete the cross examination of the defendant on that day only. On that day, if

that is not done and adjournment is sought by the plaintiffs, there will be liberty to the Trial Court to pass the further orders including the order of no cross.

[T.V. NALAWADE, J.]

ssc/