

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

922 WRIT PETITION NO. 10772 OF 2015

SAYYED MASHRUDDIN SAYYED BADSHAHA AND ORS
VERSUS
SAYYED IQBAL SAYYED AHMAD LRS SAYYED BEGAMBI SAYYED
ASABODDIN AND ORS

...
Advocate for Petitioners : R.P. Dhage h/f. Deshpande Sumant L.
Advocate for Respondents 2A to 2F : Kazi Sabahat T.
...

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

ORDER :

1. The petition is filed to challenge the orders made on Exhs. 92 and 89 in Regular Civil Suit No. 119/2006, presently pending in the Court of Civil Judge, Junior Division, Patoda, District Beed. Both the sides are heard.

2. The suit is filed for relief of permanent injunction by the present respondent. The examination in chief of plaintiff is filed on affidavit. It appears that defendant and his counsel did not turn up and the matter was adjourned for many times and atleast on two occasions nominal cost was imposed by the Trial Court. The cost was also not deposited and the defendant and his counsel did not turn up. The specific dates are mentioned in the order made on Exh. 89. The application for getting the order

of setting aside no cross order was made after about two months of the order and due to the aforesaid contentions, the Trial Court has rejected the application.

3. The learned counsel for petitioners submitted that the counsel is taking blame to himself and party should not be made to suffer due to fault of his counsel. Due to these circumstances, last opportunity needs to be given to the defendant. That can be done subject to payment of cost. It appears that this Court (Other Hon'ble Judge) by order dated 28.10.2015 had directed the petitioner to deposit RS. 5000/-. Such amount is already deposited in the Trial Court. That amount is awarded as cost to the plaintiff and that can be withdrawn. Further, the cost amount already deposited in the Trial Court on previous occasions is to be deposited by the present petitioners in the Trial Court and that is to be done prior to 24.10.2016. If the cost amount is deposited prior to that date, the defendant's counsel is to be allowed to cross examine the plaintiff and his witnesses. Parties are to appear before the Trial Court on 24.10.2016. On that date, the counsel of defendant is to complete the cross examination of the plaintiff and if that is not done and adjournment is sought on any excuse, there is liberty to the Trial Court to pass order including the order of no cross.

4. The Trial Court is expected to decide the suit expeditiously and in any case, within three months from the date of receipt of this order.

Authenticated copy is allowed to both the sides.

[T.V. NALAWADE, J.]

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