

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 51 OF 2015**

Vinayak Vishwanath Mahajani
since deceased, through his L.R.:
Anita Vinayak Mahajani

Petitioner

Vs

1. Dr. Madhukar Vasant Parange
and Ors.

.. Respondents

Mr. Manmath S. Athalye, Advocate for Petitioner.
Mr. Indrajeet Joshi, Advocate for Respondents no.1 and 2.

CORAM : R.G.KETKAR,J.
DATE : 22/02/2016

PC:

1. Heard Mr. Manmath Athalye, learned counsel for the petitioner and Mr. Indrajeet Joshi, learned counsel for respondents no.1 and 2 at length. Mr. Athalye orally applies for deleting respondents no.3 to 5 from present proceedings as they are plaintiffs no. 2 to 4 and supporting the petitioner who is plaintiff no.1. On the motion made by Mr. Athalye, leave to delete respondents no. 3 to 5 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Joshi waives service for respondents no.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff no.1', has challenged orders dated 8.8.2014 below Exhibit 48 and

11.11.2014 below Exhibit 91 passed by the learned Jt. Civil Judge, Jr. Dn., Satara, in Regular Civil Suit No.362 of 2005. By order dated 8.8.2014, the learned trial Judge passed 'no cross order' on the grounds that witness of the respondent is 84 years old and since 9.2.2011 the plaintiff did not cross-examine him. By order dated 11.11.2014, the learned trial Judge rejected the application Exh.91 made by the plaintiff for reviewing the order dated 8.8.2014.

4. Mr. Athalye has taken me through Roznama of the suit from 9.2.2011 onwards. He submitted that only on four occasions application was made on behalf of the plaintiff for adjourning the cross examination of witness of the defendants. As against this, on many occasions, applications were made by the defendants for adjournment and on many occasions witness was not present for cross examination. Mr. Athalye submits that the plaintiff will continue cross examination of the said witness on the next date of hearing in the trial Court and will complete cross examination on three dates. He further submits that the plaintiff understands that in case they do not complete cross-examination of the concerned witness on three dates, the plaintiff will not be permitted to cross-examine the said witness any further.

5. On the other hand, Mr. Joshi supported the impugned orders. He submitted that even in the past, no cross order was passed against the plaintiff. He further submitted that having

regard to the age of witness, if the court is inclined to permit the plaintiff to cross examine the said witness, the same may be completed in a time bound manner. He further submits that costs may be given to respondent no.1 and 2 as without their fault they are required to appear in this court.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of Roznama shows that on four occasions the plaintiff had applied for adjournment for cross examination of the concerned witness. As against this, on most of the occasions, application for adjournment was made by the defendants. Even on few occasions, the concerned witness was not present. In my opinion, if the Court was of the opinion that the plaintiff is delaying cross examination, it could have imposed costs on the plaintiff. Even otherwise, suit is between landlord and tenant and delay in conducting the trial will not enure to the benefit of the plaintiff. In my opinion, the learned trial judge, instead of passing 'no cross order', ought to have imposed costs on the plaintiff and also could have passed conditional order to the effect that in case the plaintiff does not complete cross examination on next dates, no cross order will be passed .

7. In view thereof, impugned orders deserve to be set aside by imposing conditions on the plaintiff. Hence the order.

(i) Impugned orders are set aside by imposing costs on the

plaintiff. The plaintiff shall pay to the defendants or deposit costs of Rs.10000/- in the trial court within two weeks from today. The defendants are permitted to withdraw the costs unconditionally.

(ii) The defendants will ensure that on the next date of hearing in the trial court, the concerned witness remains present for cross examination. The plaintiff shall complete the cross examination on three dates so fixed by the trial Court and will not seek further time for cross examination. In case the plaintiff does not complete cross examination on three dates, he will not be permitted to cross examine the said witness. Mr.Athalye assures that witness of the defendants will remain present on the dates so fixed by the trial Court. Assurance given by Mr. Athalye is recorded.

(iii) Rule is made absolute in the aforesaid terms.

(iv) Parties including the trial Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)