

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2906 OF 2014

Shantabai Asaram Nannavare

.. **Petitioner**

Versus

Krushanabai Asaram Nannavare

.. **Respondent**

Shri Vilas S. Janephalkar, Advocate for the Petitioner.

Shri Avishkar S. Shelke, Advocate for Respondent / Sole.

CORAM : S. V. GANGAPURWALA, J.

DATE : 11th December, 2017

PER COURT :

1. The application filed by the petitioner for setting aside no evidence order is rejected.
2. Mr. Shelke, learned advocate for the respondent opposes the petition and submits that time to time the plaintiff sought adjournment. On many occasions the plaintiff remained absent after examining two witnesses. The order dated 10.1.2014 is explicitly clear. The last application was granted subject to costs of Rs.100. The plaintiff did not deposit the said costs also. The

deposit of costs is a condition precedent. The learned advocate submits that the court rightly passed the order below **Exhibit – 1** on 10.1.2014. On the said date the plaintiff did not file any application. In fact the court ought to have dismissed the suit in default. The application **Exhibit – 38** is vague and does not spell out any ground or a sufficient cause.

3. The learned advocate for the petitioner submits that the witness was of a long distance and as such could not be brought before the court. The plaintiff is ready to lead the evidence on any given date.

4. I have considered the submissions canvassed by the learned advocate for respective parties.

5. The plaintiff had examined himself and two witnesses and another witness could not be brought. It appears that there is a delay on the part of the petitioner, as earlier applications were granted subject to costs and on the date when the no cross order is passed the petitioner did not file any application.

6. Considering the fact that it would be appropriate to decide the suit on merits, I grant one more opportunity to the petitioner. However, the petitioner also deserves to be mulct with costs. The petitioner to show his bonafides has deposited an amount of Rs.2,000/- (Rs. Two Thousand only) as directed by this court under order dated April 8, 2014. The petitioner shall deposit an additional amount of Rs.2,000/- (Rs. Two Thousand only) on or before 1st January, 2018.

7. In view of the above, I pass the following order.

ORDER

I] The impugned order passed below **Exhibit-1** dated 10.1.2014 and the order passed below **Exhibit-38** dated 5.2.2014 are quashed and set aside, on condition that the petitioner pays costs of Rs.4,000/- to the respondent on or before 1st January, 2018.

II] The petitioner has already deposited Rs.2,000/- (Rs. Two Thousand only) and remaining Rs.2,000/- (Rs. Two Thousand only) shall be deposited on or before 1st January, 2018.

III] The respondent is entitled to withdraw the said amount.

IV] The petitioner shall produce his witness on 1st January, 2018 before the trial court and lead evidence.

V] The deposit of costs as directed above is a condition precedent.

8. The writ petition is accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]

marathe/Dec.17