

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4653 OF 2016

Jahiroddin Samsoddin Pinjari
Age: 59 years, Occu.: Business and Agri.,
R/o 12/63, In front of Rajani Floor Mill,
Jalgaon, Dist. Jalgaon.

..PETITIONER

VERSUS

1. Shakir Haji Samsoddin Pinajari
Age: 44 years, Occu.: Agriculture,
R/o Master Colony, Mehrun,
Jalgaon, Dist. Jalgaon.

2. Zakir Haji Samsoddin Pinajari
Age: 46 years, Occu.: Agriculture,
R/o Master Colony, Mehrun,
Jalgaon, Dist. Jalgaon.

..RESPONDENTS

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Mr. S.B. Yawalkar, Advocate for petitioner.
Mr. S.R. Dheple, Advocate for respondents.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 16th JUNE, 2017**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 15th March, 2016 passed by the Trial Court by which an application at Exhibit 67 praying for

recalling of the order of closing the plaintiff's evidence dated 04th November, 2015, has been rejected.

3. While issuing notice, this Court has passed the following order on 25th April, 2016:-

- “1. Issue notice to respondents returnable on 04-07-2016.*
- 2. Till returnable date, there shall be ad-interim relief in terms of prayer clause (C) on condition that the petitioner deposits a sum of Rs.5,000/- before next date.*
- 3. In addition to service through court process, petitioner shall serve respondent by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect by returnable date.*
- 4. In case of failure to make deposit as directed and failure to serve respondent privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would cease to operate.”*

4. An amount of Rs.5,000/- has been accordingly deposited by the petitioner in this Court.

5. I have considered the strenuous submissions of Mr. Yawalkar, learned Counsel for the petitioner and Mr. Dheple, learned Counsel for the respondents.

Mr. Dheple has vehemently prayed for the dismissal of this petition with costs. He supports the impugned order on the ground that there is no perversity and the said order cannot be termed as being erroneous.

6. There is no dispute that the cross-examination of the plaintiff was completed on 22nd July, 2015 in Regular Civil Suit No. 306 of 2012. Thereafter, summons were issued to the plaintiffs-witnesses by order dated 10th August, 2015 below Exhibit 64. The plaintiff did not take steps to get the summons served and hence the Trial Court has passed an order on 04th November, 2015 closing the evidence of the plaintiff.

7. On 13th January, 2016, Defendant No.1 has filed his affidavit in lieu of examination-in-chief. On 06th February, 2016, the plaintiff's right to cross-examine him is forfeited due to his absence. Thereafter, the plaintiff has filed application at Exhibit 67 on 24th February, 2016 praying for leave to lead oral evidence. The plaintiff prayed that the order of closing the evidence be recalled and indirectly the order of no cross-examination with regard to the defendant's witnesses be set aside. No doubt the negligence and laxity on the part of the plaintiff is visible from the record.

8. It appears from the record that Counsel for the plaintiff who was ill and was taking treatment for about eight months had passed away. The plaintiff

had proceeded for Haj yatra from 16th September, 2015 to 28th October, 2015. In this backdrop, he could not attend the matter and his advocate had also passed away.

9. Considering the dates and events as recorded above, I am of the view that ends of justice would be made by giving an opportunity to the petitioner to lead the evidence through his witness without seeking further adjournment and by imposing costs.

10. As such, in the interest of justice, this petition is partly allowed. The order dated 15th March, 2016 is quashed and set aside and application at Exhibit 67 is allowed on the following conditions:

(A) Besides depositing Rs.5,000/- in this Court, the petitioner will further deposit an amount of Rs.5,000/- before the Trial Court on or before 15th July, 2017.

(B) The Respondent No.1 is permitted to withdraw the amount deposited in this Court and Respondent No.2 shall withdraw the amount deposited by the petitioner before the Trial Court as directed above, without any conditions.

(C) It shall be the responsibility of the petitioner/plaintiff to produce the witnesses for examination on or before 21st July, 2017, failing which the Trial Court would be at liberty to close the evidence of the plaintiff.

(D) If the witnesses are presented as directed above, the defendants would be at liberty to cross-examine them and the plaintiff would not seek adjournment on any unreasonable grounds.

11. Rule made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

SSD