

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

958 WRIT PETITION NO. 9994 OF 2017

BABASAHEB PANDHARI GUND
VERSUS
SUBHASH BABURAO GAIKWAD

...

Advocate for Petitioners : Mr. Satish A. Gaikwad.

Advocate for Respondent : Mr. Mahendra B. Kolpe.

...

CORAM : **V. K. JADHAV, J.**

DATE : 13th December, 2017.

ORDER:

. Heard.

2 The Petitioner / original Defendant has filed this writ petition against the order passed by the Trial Court below Exhibit 51. the Petitioner / Defendant has failed to cross-examine the Plaintiff's witness and therefore, the Trial Court has passed "no cross order". The Petitioner / Defendant has therefore, filed an application Exhibit 49 for setting aside the "no cross order". The Trial Court has allowed the said application Exhibit 49 subject to the cost of Rs.500/-. However, the Petitioner / Defendant has not paid the said cost and therefore, the "no cross order" remained as it is. Consequently, the Petitioner / Defendant has again filed an application Exhibit 51 for permission to deposit the cost and also sought permission to cross-examine the

Plaintiff and his witnesses. However, the Trial Court has turned down the said application. The Respondent / Plaintiff has instituted the suit for specific performance of contract and in view of the same, cross-examination of the witnesses examined by the Plaintiff is necessary. Though the Petitioner / Defendant is not diligent in cross-examining the witnesses of the Plaintiff and also not paying the cost as directed by the Court, considering the nature of the suit, the Petitioner / Defendant is permitted to cross-examine the witnesses of the Plaintiff subject to additional cost of Rs.1,000/-.

3 The writ petition is hereby allowed. The order below Exhibit 51 is hereby quashed and set aside. Application Exhibit 51 is allowed in terms of its prayer clause subject to additional cost of Rs.1,000/-. The Petitioner / Defendant in addition to the cost as imposed by the Trial Court on earlier occasion, shall pay the cost of Rs.1,000/- within a period of two weeks as directed herein. Writ petition is accordingly disposed of.

[V. K. JADHAV, J.]