

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2194 OF 2014

Shri Bharat Vasant Thite & Anr.

...Petitioners

vs.

Shri Sanjay Shankar Mali & Anr.

...Respondents

Mr. S. R. Moray i/b Mr. Y. S. Talkute for the Petitioners.

Mr. Satish S. Raut for Respondent No.1.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 22nd November, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The present Petitioner happens to be the original Plaintiff in Special Civil Suit No.115/2011 pending before Civil Judge, Senior Division, Pandharpur. It appears that the Petitioner No.1 has filed his affidavit of evidence on 15/9/2012. The Plaintiff No.1 had entered into the witness box and examination in chief was recorded on 5/10/2017. However, the plaintiff despite having been granted several adjournments did not subject himself to cross examination and therefore the learned Court by order dated 7/11/2013 was pleased to observe that the Plaintiff is only seeking adjournments. It appears that he is not ready to subject himself to cross examination and therefore the defence of the plaintiff was closed. The Plaintiff had then filed an application on 20/11/2013 requesting the Court to set aside the earlier order dated 7/11/2013. However at the time of hearing of the said application, the Plaintiff chose to remain absent and hence by order dated 16/1/2014, the earlier order dated 7/11/2013 was confirmed and the application below Exh.29 was

rejected. Hence, this petition.

3. It is clear from the chronology of the events that although the suit was filed in the year 2011, the petitioner had filed his affidavit of evidence on 15/9/2012 and the Petitioner No.1 had stepped into witness box on 5/12/2012 and therefore for more than 1 year, the plaintiff was only seeking adjournments and had protracted the further proceedings. In view of this the Court was constrained to reject the application seeking setting aside of the order dated 7/11/2013.

4. Mr. Moray, Learned counsel for the Petitioners submits on instructions that as of today the Petitioner No.1 is willing and ready to subject himself to cross examination on the next stipulated date and will not seek any adjournment.

5. Mr. Raut, Learned counsel for the Respondent submits that the undertaking of the Plaintiff may have no meaning at all in view of his conduct since the institution of the suit. It is also submitted that it is only a harassment to the defendant who is willing to cross examine the Plaintiff and also abuse of process of law.

6. Taking into consideration the facts of the case and submission made by the learned counsel for the Petitioner upon instructions that the plaintiff would present himself to cross examination on the next stipulated date, the petition deserves to be allowed subject to the cost of Rs.5,000/- to be paid in the Trial Court within 4 weeks. The cost be deposited on or before 28/12/2017. Upon failure to deposit the cost of Rs.5,000/- on or before 28/12/2017, the order dated 7/11/2013 followed by the order dated 16/1/2014 shall stand revived and the Learned Civil Judge, Senior Division, Pandharpur shall pass appropriate orders to that effect. Rule is

made absolute in the above terms. Orders dated 7/11/2013 and 16/1/2014 are hereby quashed and set aside. The Petitioner No.1 shall subject himself to cross examination without seeking unwarranted adjournments on any given dates after 28/12/2017. Office to communicate this order to the learned Civil Judge, Senior Division, Pandharpur seized with Special Civil Suit No.115/2011 forthwith.

(SMT. SADHANA S. JADHAV, J.)