

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2939 OF 2013***

Jalinder Pandurang Bansode	...Petitioner
Versus	
Dashrath Maruti Bansode & Ors.	...Respondents

Mr. Amol A. Gatne, for the petitioner.
Mr. Avinash N. Naikwadi, for the respondent Nos. 1 to 11, 14 & 15.

***CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 4th December, 2017.***

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The petitioner happens to be the original plaintiff in RCS No. 214 of 2007 pending before the Civil Judge, Junior Division, Indapur, Pune. The plaintiff had filed a suit for perpetual injunction. It appears that the plaintiff had sought several adjournments in the matter on the ground of illness. No cross order was passed on 13.6.2012. Thereafter, the matter was posted for hearing on more than four dates right upto 20.9.2012. However, the plaintiff had not made any effort to prosecute his suit. On

5.11.2012, the plaintiff had filed an application seeking setting aside of the order of 'No cross'. The Court had rejected the said application on 5.11.2012 itself. However, the plaintiff had not challenged the said order and hence it had attained finality.

3. On 6.12.2012, the plaintiff had once again filed an application seeking setting aside of the order of No cross. The learned Court has rightly observed that no plausible reason has been assigned for the delay in filing the application for setting aside of the order nor any reason has been assigned for seeking several adjournments in the matter. The contentions raised by the plaintiff were not substantiated and, therefore, the learned Court had rejected the subsequent application on 6.12.2012. This Court by an order dated 2.4.2013, had stayed further proceedings in the said suit. Consequently, the suit has been pending for the last 10 years.

4. The plaintiff deserves an opportunity to cross-examine the witness to take his suit to its logical end and only in the interest of justice the order dated 6.12.2012 deserves to be set aside subject to the condition that the plaintiff deposits costs of Rs.5,000/- in the Court of Civil Judge, Junior Division, Indapur, Pune on or before 22.12.2017. On payment of costs on or before 22.12.2017, the learned Civil Judge, J.D., Indapur shall

proceed with the further stages and shall not grant any unwarranted adjournment to the plaintiff or the defendant to prosecute the suit.

5. The order dated 6.12.2012 passed by the Civil Judge, J.D., Indapur, Pune in RCS No.214 of 2007 is hereby quashed and set aside. The learned Judge is hereby requested to make an endeavour to expedite the suit and conclude the same on or before 30.7.2018.

6. It is made clear that this Court has not gone into the merits of the suit except setting aside the order of No cross in the interest of justice.

7. Rule made absolute in the above terms. The Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)