

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

WRIT PETITION NO. 9085 OF 2013

Shri Babasaheb Babalal Jamadar. ... Petitioner.
Versus
Shri Hasanchand Jamadar & ors. ... Respondents.

Mr. Vijay Killedar, advocate for petitioner.

None for respondents.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 27, 2017

P.C.:

1 Heard the learned Counsel for the Petitioner. None appears for the respondent although served.

2 Rule. Rule made returnable forthwith.

3 The Petitioner herein happens to be the defendant No. 2 in R.C.S. No. 88 of 2007 pending before the Civil Judge, J.D. at Kurundwad. The suit had proceeded substantially. The Defendant

No. 2 i.e. the present petitioner happens to be the senior citizen. On 14/1/2011 the plaintiff had filed affidavit of examination in chief. On 4/10/2011 the case was posted for examination of a witness Nanasaheb Sutar. On 10/6/2011 no-cross order was passed. However, on 19/6/2012 said order was set aside. On 10/7/2013 since the advocates of the Bar Association of Kolhapur District were on strike, the advocate could not remain present to cross-examine the witness. And therefore, on the same day court had passed an order of “no cross”, which indicates that the suit would proceed undefended. On 10/7/2013 the learned Court had passed an order of “no cross”. On 23/7/2013 the Petitioner had filed an application requesting the court to set aside the order of no-cross. The said application was rejected by an order dated 23/7/2013 and hence, this Petition was filed on 26/8/2013.

4 The learned Counsel for the Petitioner submits that neither defendant No. 2 nor the advocate representing him had any intention of protracting the proceedings before the learned Court. However,

the circumstances were such that the defendant No. 2 could not participate in the said proceedings diligently.

5 In the interest of justice, the order dated 23/7/2013 deserves to be quashed and set aside. However, the Petitioner deserves to be saddled with the cost. The Petitioner shall deposit a cost of Rs. 5000/- before the Court of Civil Judge, J.D., Kurundwad on or before 15/12/2017 and the learned trial Court is hereby directed to permit the Petitioner to cross-examine the witness on the given date which shall not be later than 6 weeks from 15/12/2017. The learned Court shall not grant any unwarranted adjournment to the Petitioner. The next stipulated date for cross-examination shall be given on the condition that the cost of Rs. 5000/- is deposited on or before 15/12/2017.

6 In view of this, Petition is allowed. The order dated 23/7/2013 is quashed and set aside. The Petitioner shall deposit cost of Rs. 5,000/- in the Court of Civil Judge, J.D., Kurundwad on or before

15/12/2017.

7 Rule is made absolute in the above terms. The petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)