

Sarnobat

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

WRIT PETITION NO. 9862 OF 2016

Shri Ajit Baban Kadam & Anr. .. Petitioners.
Vs.
Shri Gorakhnath Kadam & Ors. .. Respondents

Mr. Ajit J. Kenjale, Advocate for the Petitioners.
None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 27th NOVEMBER, 2017.

P. C. :

1. The impugned order by which the petitioners was denied opportunity of cross examination was made on 5th August, 2015. This petition came to be instituted on 29th September, 2015 i.e. after the lapse of almost a year. There was no interim relief granted in this petition. This means the evidence must have progressed substantially, if not concluded. At this point of time, to put call back, will be inequitable to the respondents. The impugned order also shows that despite granted sufficient opportunity, the petitioners did not cross examine the witnesses.

2. Taking into consideration the aforesaid circumstances, no case is made out to interfere with the impugned order in the exercise of writ jurisdiction of Article 227 of Constitution. However, it is made clear

that, in case the suit is decided against the petitioners and the petitioners is to institute the substantive appeal against the decree, the petitioners will be at liberty to challenge the order impugned in this petition, on its merits.

3. With liberty as aforesaid, this petition is dismissed.
4. There shall be no order as to costs.
5. The petitioner is directed to file an authenticated copy of this order in the Trial Court within Two weeks.

[M. S. SONAK, J]