

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

WRIT PETITION (ST.) NO. 33107 OF 2016

Shri. Sopan Dhondiba Sutar & Ors. ...Petitioners

Versus

Shri. Dattatraya Narayan Kashid
(since deceased through his legal heirs)
Smt. Sushilabai Dattatraya Kashid & Ors. ...Respondents

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Mr.Prathamesh B. Bhargude for the Petitioners.
Mr. Pramod Bhosle i/b. Mr. Sharad Bhosle for the Respondents.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 6, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 18.10.2016 passed by the Civil Judge, Junior Division, Vadgaon, District-Pune thereby allowing defendant no.2 i.e. respondent no.2 to cross examine the plaintiff.

3. The plaintiff has filed Suit No. 165 of 2013 for permanent injunction in respect of the immovable property in which defendant no.2, though served, did not appear for a long time. On 24.02.2016, the order of proceeding ex-parte against defendant no.2 was passed. Thereafter,

similarly 'No Cross Order' was also passed against defendant no.2. The Suit was transferred from the Court of Civil Judge, Senior Division, Pune to the Court of Civil Judge, Junior Division, Vadgaon Maval, District- Pune. Since, there was transfer of the Suit from one Court to other Court, a fresh notice was sent to defendant no.2, pursuant to which he appeared and sought permission of the Court by filing the application at Exhibit 97 to allow him to cross examine the plaintiff. The learned Judge by the impugned order dated 18.10.2016 allowed the said application. Hence, this Writ Petition.

4. The learned counsel for the petitioner has submitted that there was an order to proceed ex-parte against defendant no.2. Similarly, earlier Civil Court, Vadgaon Maval, District- Pune on 28.10.2009 had passed the order of 'No Cross' against defendant no.2. He has submitted that once the order of 'No Cross' is passed by the Court, then the Court having similar jurisdiction cannot pass other order unless that order is specifically challenged by defendant no.2 and the order of setting aside the said order is obtained. He has further submitted that once the order is passed, then it is res judicata and the successor has no authority unless the earlier order is set aside.

5. The learned counsel appearing for the respondents i.e. defendant no. 2, has supported the order of the learned Judge.

6. Perused the order. There was an order of 'No Cross'. However, a perusal of the application Exhibit 97 preferred by defendant no.2, it is found that permission of the Court to allow cross examine the plaintiff is sought by this application. It means defendant no.2 has asked for setting aside 'No Cross Order'. A party can be allowed to cross examine the witnesses, even though there is an ex-parte order or 'No Written Statement' order is passed. The cross examination can be on a law point and in respect of the examination in chief of a witness, however the party cannot put up his defence. The learned trial Judge has considered this aspect and has passed a reasoned order. I do not find any illegality in the order dated 18.10.2016 passed by the Civil Judge, Junior Division, Vadgaon, District-Pune. Hence, no interference is required.

7. In view of the above, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)