

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 196 OF 2018

FAKEERSAB MOHMADSAB MUJAWAR AND ANOTHER
VERSUS
YASMIN AYUB MUJAWAR AND OTHERS

...

Advocate for the Petitioners : Shri Madde Shrikant B.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th January, 2018

Per Court:

1 The Petitioners, who are the original Defendant Nos.1 and 2 in RCS No.3/2008, are aggrieved by the order dated 02.12.2017 passed by the Trial Court rejecting the application Exhibit-136, thereby, declining to recall the Plaintiff for cross-examination.

2 I have considered the strenuous submissions of the learned Advocate for the Petitioners and have gone through the petition paper book with his assistance.

3 The Petitioners were before this Court earlier in Writ Petition No.11284/2015 as they had not cross examined the Plaintiff for a long time and the Trial Court had ordered "no cross examination". The application for setting aside of this order was also rejected by the Trial Court and hence, the Petitioners approached this Court. By order dated

21.03.2016, this Court partly allowed the said writ petition by issuing the following direction in paragraph 6(a) as under:-

"(a) The impugned order rejecting the application for setting aside no cross order is set aside and the said application filed by the petitioner is allowed subject to payment of cost of Rs.5,000/- (Rupees Five Thousand) to the original Plaintiffs on or before 15.04.2016. The Petitioner shall not seek further adjournments and shall cross examine on the said date."

4 The learned Advocate for the Petitioners submits that the Plaintiff was not present before the Trial Court on 15.04.2016 when costs of Rs.5000/- were deposited. In this backdrop, the Petitioners could not cross examine the Plaintiff.

5 I have gone through the impugned order. It appears that the costs were deposited by the Petitioners on 15.04.2016. The said amount was withdrawn by the Plaintiff on 15.04.2016. The Trial Court has recorded that the Plaintiff was present on the said date when the amount was withdrawn. Thereafter, the matter was posted on 15.06.2016 and the Trial Court recorded that the Plaintiff and her witnesses were present in the Court. The Petitioners cross examined the Plaintiff Witness No.2 below Exhibit-123. The matter was then adjourned to 02.07.2016 when the Plaintiff was again present. The Defendants filed the application Exhibit-129 seeking an adjournment.

6 The above conduct of the Petitioners/ Defendants is

apparently in opposition to the direction issued by this Court vide its order dated 21.03.2016 which is reproduced herein above.

7 In this backdrop, I do not find that the impugned order passed by the Trial Court refusing to recall the Plaintiff for cross examination, could be termed as being perverse or erroneous. It appears from the sequence of events that the Petitioners probably aimed at delaying the suit, which was instituted in 2008.

8 This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)