

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

904 WRIT PETITION NO. 3442 OF 2018

1. Shaikh Javed s/o Shaikh Mehmood
Age : 39 Yrs., Occ. Agriculture,
R/o : Opp. Urdu School, Khandala,
Tq. : Vaijapur, Dist. : Aurangabad.
2. Shaikh Sajid s/o Shaikh Mehmood
Age : 40 Yrs., Occ. Agriculture,
R/o : Opp. Urdu School, Khandala,
Tq. : Vaijapur, Dist. : Aurangabad.
3. Shaikh Fahim s/o Shaikh Mehmood
Age : 43 Yrs., Occ. Agriculture,
R/o : Opp. Urdu School, Khandala,..**PETITIONERS/**
Tq. : Vaijapur, Dist. : Aurangabad. **[ORI. PLTFFS.]**

VERSUS

1. Shaikh Ramzan s/o Shaikh Ibrahim
Age : 65 Yrs., Occ. Agriculture,
R/o : Loni (Bk.), Tq. : Vaijapur,
Dist. : Aurangabad.
2. Shaikh Mustaq s/o Shaikh Ramzan
Age : 39 Yrs., Occ. Agriculture,
R/o : Loni (Bk.), Tq. : Vaijapur,
Dist. : Aurangabad.

3. Shaikh Murtuza s/o Shaikh Ramzan
Age : 36 Yrs., Occ. Agriculture,
R/o : Loni (Bk.), Tq. : Vaijapur, .. **RESPONDENTS/**
Dist. : Aurangabad. **[ORI. DEFTS.]**

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Mr. Shaikh Mujtaba Gulam Mustafa,
Advocate for Petitioners.

Mr. J.G.Toshniwal, Advocate for R - 1 to 3.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 13th APRIL, 2018

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard finally at the stage of admission.
2. By this petition filed under Article 227 of Constitution of India, the petitioners have challenged the Order dated 17/11/2017 passed by Jt. Civil Judge [Jr.Division], Vaijapur, District Aurangabad in R.C.S. No. 235/2010. By the impugned order, learned Judge of the Trial Court has rejected the application [Exh. 51] seeking permission to examine the witnesses in support of case of the plaintiffs by observing that the Suit is of the year 2010 and despite granting sufficient opportunity, the plaintiffs have failed to

produce witnesses whose names are mentioned in Exh. 35 and closed the evidence of plaintiffs. Being aggrieved, the petitioners have preferred this petition.

3. Learned counsel for the petitioners assailed the order by referring to certain dates and events which have taken place before passing the impugned order. It is pointed out that the Issues in the case were framed on 05/07/2017. Immediately thereafter on 14/07/2017 the petitioners have furnished list of witness vide Exh. 35. Affidavit by way of Examination-in-Chief was filed on 21/07/2017 vide Exh. 36. It is pointed out that the cross examination of plaintiff was concluded on 19/01/2018 that too after setting aside the order to proceed without cross examination passed in the matter. In the background of the facts, learned counsel submitted that the reasons recorded by the trial Court in rejecting the application are perverse and not sustainable in law.

4. On the other hand, learned counsel representing the respondents submitted that the order passed by the trial Court calls for no interference in exercise of powers under Article 227 of Constitution of India. He submits that the Suit is of the year 2010. The petitioners were granted several opportunities to produce the witnesses. On failure

to produce the witnesses, trial Court has passed the order.

5. On due consideration of the submissions advanced in the light of order passed, I am of the view that the order passed by the trial Court is not sustainable in law and it has resulted into serious miscarriage of justice to the petitioners. As recorded in the order itself, the Issues were framed on 14/07/2017. As required under Order XVI Rule 1 of Code of Civil Procedure, the plaintiffs have furnished the list of witnesses vide Exh. 35. The plaintiffs have filed affidavit by way of Examination-in-Chief and stepped in for cross examination. It is the defendants who failed to cross examine the witnesses which leads to passing order to proceed without cross examination. On the application made by the defendants to cross examine the witnesses, the order to proceed without cross examination was set aside and the defendants were permitted to cross examine the witness No. 1 for the plaintiffs. It is not disputed that the cross examination of witness No. 1 for the plaintiff was concluded on 19/01/2018. In this back-ground, there was no justification on the part of trial Court to have refused to entertain the request of the plaintiffs to examine the witnesses in support of his case, as per the list of

witnesses already filed vide Exh. 35. During the course of submissions, learned counsel for the petitioners submits that the petitioners are ready to produce the witnesses on the next date of hearing and they will not seek adjournment in the matter. I am of the view that the trial Court has shown undue haste in the matter in passing the order to close the evidence of plaintiffs and to deprive the plaintiffs to examine witnesses in support of their case.

6. In the result, the petition is allowed. The impugned order is set aside. The petitioners are directed to appear before the trial Court on 21/04/2018 with the witnesses to be examined by them. Trial Court is directed that in case such witnesses are produced by the plaintiffs, same be examined on 21/04/2018 or thereafter at any other date convenient for the Court. Failure to produce the witnesses by the plaintiffs, trial Court will be at liberty to proceed further in the matter. With this order and direction, Writ Petition stands disposed of. The parties may act upon the authenticated copy of this Judgment.

7. Rule made absolute in the above terms.

[V.L.ACHLIYA, J.]