

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6891 OF 2014

Mukund s/o Devrao Kharat
age 49 years, occ. service
r/o Vishal Tower, Plot No. C-5
N-7, Cidco
Aurangabad

Petitioner

Versus

Sudam s/o Sampat Ingale
age 50 years, occ. service
r/o N-6, F-30/14
Cidco, Aurangabad.

Respondent

Mr. A.G. Kulkarni, advocate for petitioner.
Mr. V.S. Janephalekar, advocate for respondent.

CORAM : R.M.BORDE, J.
DATE : 26th MARCH, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally at admission stage with the consent of learned counsel for the respective parties.
3. Application tendered by petitioner-original defendant for setting aside order passed by the Court on 13.06.2014 refusing to extend an opportunity to the defendant to cross examine the witnesses has been turned down by the trial Court in view of order passed on 08.07.2014.
4. It is the contention of defendant that on the given date, his

father had suffered heard attack and was taken to Mumbai. Defendant accompanied his father to Mumbai and as such could not issue instructions to his advocate for cross examining the witnesses.

5. The reason set out in the application is not demonstrated to be erroneous and the application has been turned down on the ground that the same is not signed by defendant or his counsel. Defendant needs to be extended an opportunity to meet the case set up by plaintiff. The inconvenience caused to plaintiff can be compensated by directing defendant to pay cost.

6. In the circumstances, the petition is allowed. The order passed by the trial Court on 08.07.2014 below Exh. 40 is set aside and the application tendered by defendant for setting aside the order passed of 'no cross' is allowed. Defendant shall deposit cost of Rs. 5,000/- payable to the plaintiff before the Trial Court within a period of four weeks from today. Plaintiff shall make available the witnesses for cross examination by defendant on the next date prescribed in the matter and defendant shall be extended an opportunity to cross examine said witnesses. Rule is accordingly made absolute.

R.M.BORDE
JUDGE