

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

WRIT PETITION NO. 9590 OF 2015

MUKUND MADANGOPAL MALU
VERSUS
M/S. GOYAL ZARDA PVT LTD AND OTHERS

...
Advocate for Petitioner : Mr. Deshmukh Umakant B

...
CORAM : V.K. JADHAV, J.
Dated: January 08, 2018

...
PER COURT :-

1. Being aggrieved by the order passed below exh.103 and 105 in R.C.S. No.478/2012, original defendant no.1 has approached to this Court by filing present writ petition.

2. Learned counsel for petitioner/original defendant no.1 submits that, the petitioner/original defendant no.1 failed to remain present for his cross examination and thus by order dated 24.3.2015 below exh.99 the trial court has discarded the evidence of the petitioner/defendant no.1. The petitioner has therefore filed an application exh.103 for setting aside the said order and the learned Judge of the trial court by

aaa/-

impugned order dated 17.8.2015 though allowed the application exh.103 subject to costs of Rs.3,000/- directed the petitioner to remain available for cross examination on behalf of the plaintiff on that day itself and further stated in clause no.2 of the operative part of the order that, failure to comply the above conditions the application shall be treated to be rejected. On the same day, the learned counsel for petitioner/original defendant no.1 before the trial court has filed an application exh.105 stating therein that the petitioner is residing at Sangali and it is not possible for his client to appear on the same day in the suit for his cross examination. However, by order dated 17.8.2015 trial court has rejected the application exh.105.

3. Learned counsel further submits that, though the trial court has allowed the application exh.103, however, by clause no.2 of the operative part of the order, imposed unreasonable condition. It was not possible for the petitioner to attend the case on the same day for his cross examination and thus his counsel on the same

day by filing an application exh.105 pointed out to the Court that the petitioner was at Sangali and he would appear before the court on next date for cross examination. Learned counsel submits that the petitioner/original defendant is ready to remain present before the Trial Court as and when directed by this court for cross examination.

4. None appears for respondents/plaintiffs though duly served and even notice of final disposal is also served on them.

5. I find the condition as imposed vide clause no.2 of the operative part of the order passed below exh.103 as quite unreasonable. On the same day, the learned counsel for the petitioner/defendant no.1 has pointed out to the trial court that the petitioner was at Sangali. Even then the court has not considered the same and rejected the application. In view of the above, this writ petition can be disposed of by directing the present petitioner/defendant no.1 to appear before the trial

court on a fix date for his cross-examination and to lead further evidence if any. Hence, following order.

O R D E R

1. Writ Petition is hereby partly allowed.
2. The order passed below exh.103 dated to the extent of clause no.2 of the operative part of the order dated 17.8.2015 by the Civil Judge S.D., Nanded and the order passed below exh.105 dated 17.8.2015 are hereby quashed and set aside with the following conditions :-
 - a] Petitioner/defendant no.1 shall appear before the Trial Court on 5.2.2018 for his cross-examination and, in case, if, the matter is adjourned at the instance of the other side for one or another reason, to appear on the subsequent dates as directed by the trial court for his cross-examination and also to adduce other evidence, if any.
3. Writ Petition accordingly disposed of.

(V.K. JADHAV, J.)

...