

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

WRIT PETITION NO. 11349 OF 2015

SIKANDER HAJI KADAR ATTAR
VERSUS
SUBHASH DAGDU MANDVGAD DIED THROUGH LRS SANGITA
SUBHASH MANDVGAD AND OTHERS

...
Advocate for the Petitioner : Shri Kulkarni Sanket S..
AGP for Respondent 7 : Shri B.A.Shinde.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th June, 2018

Per Court:

1 Despite service of court notices initially and subsequently for final disposal as well, no appearance has been caused by the Respondents either in person or through an advocate. The learned AGP appears for Respondent No.7/ State.

2 The Petitioner/ original Plaintiff is aggrieved by the order dated 05.10.2015 by which, he was refused an adjournment to cross examine Defendant No.2 and "no cross" order was passed. He preferred the application Exhibit-186 on 16.10.2015 praying for leave to cross-examine and for vacating "no cross" order. By the impugned order dated 16.10.2015, the application Exhibit-186 has been rejected.

3 I have considered the submissions of the learned Advocate for

the Petitioner and have gone through the nine grounds formulated by him in the memo of the petition.

4 The record reveals that Defendant No.2 tendered an affidavit in lieu of examination-in-chief on 22.09.2015 and the matter was posted for cross-examination on 05.10.2015. On that date, the said Defendant produced certain documents, which have been exhibited as Exhibits 168 to 183. The Petitioner, therefore, moved an application praying for an adjournment so as to study the said documents and cross-examine the said witness. The Trial Court refused an adjournment, rejected the application Exhibit-184 and passed "no cross" order. Within 11 days i.e. on 16.10.2015, Exhibit-186 was filed praying for recalling of the "no cross" order. Defendant No.2 did not seriously oppose the application and stated that the Court may pass an appropriate order. Exhibit-186 was rejected on the same date.

5 The suit involves an immovable property. The Plaintiff would lose a valuable right by the no cross order. It is necessary for the proper adjudication of the suit that Defendant No.2 is subjected to cross-examination by the Plaintiff.

6 Considering the above and keeping in view that the adjournment application was filed on the day on which fresh documents were deposited in the Trial Court by Defendant No.2, that this Writ Petition is allowed. The impugned order dated 16.10.2015 is quashed and

set aside. The application Exhibit-186 stands allowed. No cross order dated 05.10.2015 is set aside. The Petitioner shall proceed to cross examine Defendant No.2 at the earliest and in any case, within a period of four weeks from today.

kps

(RAVINDRA V. GHUGE, J.)