

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 2478 OF 2018**

Siddharth Suhas Bhagat] Petitioner

Vs.

Bimal @ Bimalkumar Mannulal Agarwal] Respondent

.....

Mr. Siddharth S. Bhagat in person.
Mr. Girish R. Agrawal, for Respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 13TH APRIL, 2018.

P.C.

Heard Mr. Bhagat, petitioner in person and Mr. Agrawal, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant' has challenged the order dated 14th November, 2017 passed below Exhibit 35 and 57 as also judgment and order dated 11th December, 2017 passed by the 6th Additional Judge, Small Causes Court, Pune below Exhibit 95 in Civil Suit No.302 of 2013. By order dated 14th November, 2017, the learned trial Judge after recording that witness of the plaintiff is present and that the defendant is not ready to cross-examine the witness passed “no cross order”.

3. The defendant thereafter took out application Exhibit 95 for setting aside “no cross order” passed below Exhibit 35 and 57. In paragraph 2 of that application, the defendant contended that he has concluded partial

cross-examination on 23rd June, 2017 and the matter was adjourned. The matter was adjourned from time to time till 4th August, 2017. Thereafter, earlier Advocate representing him abruptly left the matter in between and communicated him that he will not be able to conduct the matter.

4. In paragraph 3, it was contended that next date was fixed as 8th September, 2017. On 8th September, 2017, the defendant moved application stating that he wants to appoint new Advocate. Thereafter, the matter was adjourned to 19th September, 2017. On that date, the Court was on leave and the matter was adjourned to 9th October, 2017. On that date also, the Court was on leave and matter was adjourned to 14th November, 2017. Due to financial crunches, the defendant could not engage Advocate till 9th October, 2017. On 14th November, 2017, the defendant engaged new Advocate Mr. Umesh Deshmukh. However, as earlier Advocate did not give no objection for filing Vakalatnama, the same could not be filed on that date. As the matter was fixed for further cross-examination of the plaintiff, the Court asked the defendant to conduct the cross-examination. As defendant is a layman, he showed inability to conduct cross-examination and filed application Exhibit 91 for adjournment. The learned trial Judge rejected that application Exhibit 91 and also passed no cross-order.

5. In paragraph 4, it was contended that the matter was thereafter posted on 28th November, 2017. The defendant's new Advocate filed his Vakalatnama and sought time to study the matter and take further steps. As no cross order was already passed on 14th November, 2017, application Exhibit 95 was filed for setting aside that order.

6. Mr. Bhagat reiterated the submissions raised in application Exhibit 95 and relied on decision of the Apex Court in the case of **Jayendra Vishnu**

Thakur Vs. State of Maharashtra and Anr, (2009) 7 SCC 104 and in particular on the following portion;

“A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication”.

7. Mr. Bhagat also relied on the decision of the Rajasthan High Court in the case of **Aasandas S/o Shri Vali Ram Vs. State of Rajasthan & Ors., RLW 2005 (2) Raj 1281** and in particular paragraph 14 thereof, to contend that right of cross-examination can be refused only in rare cases.

8. On the other hand, Mr. Agrawal supported the impugned orders. He submitted that the defendant's defence was struck out by order dated 24th November, 2015. Aggrieved by that order, the defendant instituted Writ Petition (ST) No.2464 of 2016. He also invited my attention to the orders dated 10th June, 2015 and 23rd July, 2015 passed by this Court (Coram: M.S. Sonak, J.) in Writ Petition No.5100 of 2015 and in particular paragraph 7 thereof. By that order, this Court directed the defendant to pay compensation @ Rs. 25,000/- per month instead of Rs. 39,600/-. To this extent, the order dated 23rd September, 2014 challenged in that Petition was modified. This Court also recorded undertaking of the defendant to clear arrears within a period of four weeks from the date of the order. Mr. Agrawal submitted that as on today, defendant is in arrears of Rs. 11,00,631/-. He submitted that while dismissing Writ Petition (ST) No.2464 of 2016 on 6th April, 2016, this Court

noted that defendant is not ready and willing to comply order dated 23rd July 2015 passed in Writ Petition No.5100 of 2015. During the course of hearing, I called upon the defendant to show his willingness to comply paragraph 7 of the order dated 23rd July, 2015. He expressed his unwillingness to comply that order. He submitted that part cross-examination of the plaintiff's witness was concluded on 23rd June, 2017 and after nearly five months, the learned trial Judge passed no cross order.

9. I have considered the rival submissions of Mr. Bhagat and learned Counsel for the respondent. I have also perused the material on record. As noted earlier, the defendant has challenged the order dated 14th November, 2017, by which no cross order was passed. He has also challenged the order dated 11th December, 2017 passed below Exhibit 95 by which the application moved by the defendant for setting aside no cross order dated 14th November, 2017 was rejected. A perusal of the reasons given in the application shows that the defendant came with the case that his earlier Advocate abruptly left the matter and informed him that he would not be able to conduct the matter. At the request of the defendant for engaging new Advocate, the matter was adjourned to 19th September, 2017. As the Court was on leave on that date, the matter was adjourned to 9th October, 2017. Even on that date, the Court was on leave and the matter was adjourned to 14th November, 2017. Thus, the defendant had ample time to engage Advocate after the matter was adjourned on 8th September, 2017. In the application Exhibit 95, the defendant contended that on 14th November, 2017, he could engage Advocate. But, as earlier Advocate had not given NOC to file Vakalatnama, the same could not be filed. The Court asked the defendant to conduct cross-examination. As the defendant is a layman showed his inability to conduct the cross-examination and moved application for adjournment.

10. A moot question is whether the defendant can claim to be a layman and express his inability to cross-examine the plaintiff's witness in particular, when the defendant appeared in person in Writ Petition (ST) No.2464 of 2016 before this Court. Even in the present Petition, he appears in person. Reason given by the defendant that as he is a layman person, he could not conduct cross-examination of the plaintiff's witness, cannot be countenanced. During the course of hearing, I repeatedly called upon him to express his willingness to comply paragraph 7 of the order dated 23rd July, 2015 in Writ Petition No.5100 of 2015. In the order dated 6th April, 2016, this Court called upon him to comply order dated 23rd July, 2015 in Writ Petition No.5100 of 2015. Even, at that time, he was not ready to comply that order.

11. Mr. Bhagat relied on decision in the case of **Jayendra Vishnu Thakur** (supra). In that case, the Apex Court observed that right to cross-examine the witness, apart from being a natural right is a statutory right. Right to cross-examine is a valuable right. There is no dispute about the proposition laid down in that decision. Mr. Bhagat also relied on the decision in the case of **Aasandas S/o Shri Vali Ram**, (supra) in particular paragraph 14. The learned Single Judge observed that refusal to cross-examine should be in rare case. There is no dispute about this proposition as well. The question is whether the decisions are applicable in the facts of the present case. For the reasons recorded earlier, in my opinion, the said decisions are not applicable to the present case and do not advance defendant's case.

12. Having regard to the conduct of the defendant, this is not a fit case for exercising power under Article 227 of the Constitution of India. That apart, as noted earlier, part cross-examination was concluded on 23rd June, 2017 and it is only thereafter on 14th November, 2017, no cross order was passed against the defendant. I do not find that any case is made out for

setting aside no cross order dated 14th November, 2017. In the result, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]