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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10714 OF 2017

Hiral Harendra Doshi	...	Petitioner
V/s.		
Smt.Usha Sudhir Ajmera and ors	...	Respondents

Mr. Vikas S. Sharma, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] By this petition filed under Article 227 of the Constitution of India, petitioner is challenging the order dated 6th July 2017, passed by the City Civil Court, C. R.NO.2, thereby rejecting the Notice of Motion No.1850 of 2015, preferred by the petitioner for setting aside the order of “no-cross”.
- 3] The perusal of the Roznama of the trial Court in which this order is passed, clearly shows that the suit is of 7 years old and it is kept for cross examination of P.W.1 since 12.11.2013. As the petitioner failed to take cross examination, the order of “no cross” came to be passed on 24.9.2014. On the application of learned counsel

for petitioner, it came to be set aside on 23rd January, 2015 subject to costs of Rs.1,000/-. Thereafter again on 7.4.2015, the petitioner sought time. It was granted subject to costs of Rs.2,000/-. These costs of Rs.2,000/- are not paid. Hence again on 12.6.2015, the order of “no cross” came to be passed and accordingly on 10.7.2015, evidence of respondent-plaintiff came to be closed and the matter was kept for evidence of petitioner-defendant; and thereafter on 14.07.2015, the petitioner moved the instant Notice of Motion for setting aside the order of “no cross”.

4] Thus, perusal of the roznama, clearly goes to show that the conduct of the petitioner in proceeding with matter has been of utter negligence on his part. If the matter is dragged from 2013 to 2017 for cross examination of P.W.1, then it follows that petitioner deserves no leniency especially when the earlier costs of Rs.2,000/- are not paid till date.

5] However, only because the suit pertains to immovable property, in order to subserve the substantial cause of justice, the order of “no cross” is set aside subject to payment of costs of Rs.10,000/- in addition to costs already imposed by trial Court.

6] The learned counsel for petitioner submits that matter before trial court is fixed on 22nd January, 2018, and he undertakes to deposit the costs in the trial Court on that day.

7] In view thereof the order of “no cross” is set aside.
Petition is allowed in above terms.

8] It is made clear that failure on the part of petitioner to
pay/deposit costs by 22.01.2018, order of this Court shall stand
vacated.

9] Parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]