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

WRIT PETITION NO.1211 OF 2018

Dattatray Phalke	...	Petitioner
V/s.		
Mohan Sable and anr	...	Respondents

Mr. Vaibhav R. Gaikwad, for the Petitioner.
Mr. Manmath S. Athalye, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3RD APRIL, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondents.
- 2] By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 17.2.2017, whereby the order of “No cross” of the respondent-plaintiff, was passed. Then the petitioner has filed application at Exh.95 for setting aside the order of “No cross” which came to be rejected by the trial Court on 16.6.2017. Hence being aggrieved thereby, this writ petition is preferred
- 3] The submission of learned counsel for the petitioner is that the petitioner needs to be given an opportunity to cross examine the respondent-plaintiff, otherwise grave injustice and prejudice is

likely to be caused to the petitioner. It is submitted that if the petitioner is given such opportunity to cross examine the respondent plaintiff, no prejudice is likely to be caused to the respondent. An attempt is also made to draw attention of this Court to the fact that previously respondent-plaintiff has also sought adjournments for leading his evidence. In such situation, now if the petitioner has sought adjournment, the trial Court should not have rejected the same and ought to have allowed the petitioner to cross examine respondent -plaintiff.

4] In my considered opinion, however, this submission is without any merits because if it is a question of giving an opportunity to the petitioner to cross examine the respondent, then the roznama of the trial Court alongwith various applications filed by the petitioner, before the trial Court are the testimony to the fact that the trial Court has given not only sufficient opportunities but more than sufficient and ample opportunities to the petitioner to cross examine the respondent. However, despite that, the petitioner has failed to avail such opportunities. Therefore, the petitioner now cannot contend that if the opportunity is not given to him, grave prejudice is likely to be caused to him.

5] It can be seen from the roznama that after the affidavit in lieu of examination-in-chief was filed by respondent-plaintiff and it

was kept for cross examination by petitioner, on 17.11.2016 the petitioner filed an application for adjournment for conducting cross examination of respondent on the count that his advocate Shri. Galande is out of station. The said application was allowed by the trial Court as a last chance, despite the objection taken by respondent to that application. Thereafter on the adjourned date i.e. 7.12.2016, another application was filed for adjournment by the present petitioner on the count that his advocate is not keeping well and therefore, matter be adjourned. The trial Court has, considering the ground that advocate was not keeping well, granted adjournment on that day also and adjourned the matter to 16.01.2017. On that day also, again adjournment application was filed on the count that advocate of respondent is suffering from giddiness. The said application was strongly resisted by the petitioner. Even then the trial Court has granted another opportunity to the petitioner, which was subject to costs of Rs.200/-

6] The matter was then adjourned to 3.2.2017. Again on that day, on the vague ground that relative of the advocate of the petitioner has expired, adjournment was sought. The said application was also strongly resisted by the respondent on the count that even the costs of Rs.200/-which were imposed while granting adjournment on the last occasion, were not paid or deposited in Court. Despite

that, the trial Court has again given adjournment as a last chance.

7] Thus, it can be seen that four applications were filed by petitioner for adjournment. By allowing all these applications, trial Court has given more than sufficient opportunities, despite the fact reasons given in the adjournment applications were not justified. In such situation if the trial Court has passed the order of “No cross”, on the fifth adjourned date, then no fault can be found in the impugned order. It will be the travesty of justice, to submit now that if the opportunity is not given to the petitioner, grave injustice and prejudice is likely to be caused to him.

8] If in spite of several opportunities given to the petitioner to cross examine the respondent-plaintiff, he did not avail them and thereafter even took part in cross examination of the witnesses, which were examined by the respondent, and then if the petitioner comes to this Court after lapse of about 7 to 8 months, after the order of “No cross” is passed, it does not lie in the mouth of the petitioner to submit that grave injustice and prejudice would be caused to him, if the opportunity is not given to cross examine the respondent plaintiff. It is pertinent to note that, after this order of “no cross”, was passed on 17.2.2017, the respondent has led the evidence of four more witnesses. They are cross examined by the petitioner. So it is not the case of the petitioner that petitioner is not given an

opportunity to cross examine the witnesses of respondent.

9] Now by filing this writ petition at belated stage and thereafter also even though no stay granted by this Court, not allowing the trial Court to proceed with the hearing of the suit is as good as scuttling the course of justice and the interest of justice requires that no party should be permitted to do so. Therefore, this is not a fit case, where this Court should interfere in the discretion exercised by the trial Court and set aside the impugned order passed by the trial Court.

10] The Writ Petition, therefore, being without merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]