

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

**CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 13566 of 2016

Bantar Purushottam Narudkar and others ..Petitioners.

Vs

Shankar Rakhamaji Shinde and others ..Respondents.

Mr. Kayval Shah for the petitioners.

Mr. Benimadhav H. Goswami for Respondent No.1 to 3.

**CORAM : R.M. BORDE,J**

**DATED : 29<sup>th</sup> October, 2018**

**P.C. :**

- 1) Heard learned counsel for the parties.
- 2) Rule. Rule is made returnable forthwith. The petition is taken up for disposal at admission stage.
- 3) The petitioners (original defendants) are objecting to the inter-locutory order passed by the trial Court refusing to permit cross-examination of the witness produced by the plaintiff i.e. plaintiff himself. It is noticed that the suit was presented in 2006 and it was fixed for recording cross-examination of the plaintiff on earlier occasion i.e. on 5/10/2015. On the aforesaid date the defendants did not remain present

and did not cross-examine the plaintiff. As such the trial Court directed to proceed the suit without the cross-examination of the plaintiff's witness. The order passed by the Trial Court on earlier occasion i.e. 5/10/2015 has been recalled at the request of learned counsel for the defendants and at that point of time the plaintiff also did not raise any serious objection. On second occasion when the suit was listed for conducting cross-examination of the plaintiff, on 20<sup>th</sup> July, 2016 in spite of requiring the presence of counsel of the defendants on the given date the counsel for the defendants did not remain present and as such the Trial Court was constrained to pass an order directing to proceed the suit without cross-examination of the plaintiff's witness. An application tendered by the petitioners at Exh.172 for recall of the plaintiff for conducting cross-examination has been turned down by the Trial Court on 14<sup>th</sup> September, 2016. It does appear that the defendants were not ready to prosecute the suit in spite of granting sufficient opportunity and the defendants have failed to cross-examine the plaintiff. It is urged before me that since the subject-matter of the suit is a valuable immovable property, one more opportunity may be afforded to the defendants. The suit is presented in the year 2006 and has remained pending as a result of failure of the parties to cooperate the court in expeditious disposal of the suit. There are such observations made by the learned trial Judge in the order impugned in the petition. Considering the

fact that the litigation before the trial Court relates to valuable immovable property, I deem it appropriate to extend one more opportunity to the defendants, however subject to payment of costs of Rs.25,000/-.

4) In the result, writ petition is allowed and the order impugned in this petition passed by the Trial Court below Exh.172 in Regular Civil Suit No. 83 of 2006 dated 14<sup>th</sup> September, 2016 is quashed and set aside, subject to payment of costs of Rs.25,000/- to be deposited in the trial Court on or before 26<sup>th</sup> November, 2018.

5) The respondent (original plaintiff) shall keep the witness i.e. the plaintiff himself present before the Trial Court for conducting cross-examination by the defendants on 26<sup>th</sup> November, 2018 and the defendants shall cross-examine the plaintiff on the given date. If because of any contingency, it becomes difficult for the party or the Trial Court to hold the cross-examination as directed above on 26/11/2018, the same shall be completed either on 27<sup>th</sup> November, 2018 or 28<sup>th</sup> November, 2018. Both parties i.e. the plaintiff and the defendants assure to co-operate the trial Court in complying with the above directions issued by this Court.

6) Out of the amount of Rs.25,000/- directed to be deposited by the defendant, a sum of Rs.10,000/- shall be paid to the plaintiff and balance amount of Rs.15,000/- shall be transferred to the account of Taluka Legal Services Authority. The trial Court shall complete the trial of the suit and

dispose of the same before 31<sup>st</sup> March, 2019.

7) Rule is made absolute to the extent as specified above.

**(R.M. BORDE,J)**