

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

WRIT PETITION NO. 491 OF 2019

**THE AGRESAR URBAN CO. OP. CREDIT SOCIETY LIMITED
JALGAON THROUGH CHIEF MANAGER
VERSUS
SURESH PANDHARINATH JOSHI AND OTHERS**

...

Advocate for the Petitioner : Shri K. K. Kulkarni
Advocate for Respondent No.1 : Shri P. B. Salunke h/f.
Shri V. A. Pawar

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th MARCH, 2019.

...

PER COURT :

1. This matter was not on board.
2. The learned Advocate for the petitioner moved a motion at 2.30 p.m. expressing urgency. Hence taken on the production board.
3. The petitioner Credit Co-operative Society - defendant No.1 in Special Civil Suit No. 292/2010, is aggrieved by the impugned order dated 04/01/2019, by which, application Exhibit 141 filed by the petitioner seeking leave to cross

examine the plaintiff, has been rejected.

4. I have heard the learned Advocates for the respective sides. Respondent Nos. 2 to 4, though served, have not caused an appearance in this matter.

5. The plaintiff examined himself on 07/02/2018. Thereafter, the plaintiff had moved an application seeking production of documents. This consumed some time. The petitioner defendant then moved an application for recasting of issues. As the said application was rejected, it preferred a Writ Petition No. 12981/2018, which was disposed off by this Court by order dated 28/11/2018. Thereafter, the "no cross" order was passed on 12/12/2018. The petitioner moved an application on 15/12/2018 i.e. on the third day, for vacating the "no cross" order. By the impugned order dated 04/01/2019, Exhibit 141, was rejected.

6. Though the learned Advocate for respondent No. 1 has strenuously opposed the petition and has prayed for costs while dismissing the petition, I find that the petitioner is likely

to lose his valuable right to cross examine. No doubt, the plaintiff tendered his affidavit in lieu of examination in chief on 07/02/2018 and was not cross examined for ten months and one week. However, it cannot be ignored that certain hearings occurred in the interregnum with relation to the production of documents and recasting of issues. Laches or ulterior motives, therefore, cannot be attributed to the petitioner.

7. Notwithstanding the above, the petitioner should have been diligent and should have asserted it's right to cross examine the plaintiff, notwithstanding certain applications that were filed.

8. In the light of the above, this petition is partly allowed. The impugned order dated 04/01/2019 is quashed and set aside. Application Exhibit 141 is partly allowed on the following conditions :-

- (a) The plaintiff shall appear before the Trial Court on 29/03/2019.
- (b) The petitioner shall cross examine the plaintiff on

the same date and shall not seek an adjournment.

(c) The petitioner shall deposit costs of Rs. 5,000/- (Rupees Five Thousand only) on or before 29/03/2019.

(d) The learned Advocate for respondent No.1 plaintiff submits that the amount be donated for the treatment of the poor patients. Hence, the amount shall be deposited with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”**), as directed.

(e) Since the Special Civil Suit No. 292/2010 is pending for the last nine years, the Trial Court would endeavour to decide the said suit as expeditiously as possible and in any case on or before 25/10/2019.

(f) The litigating sides would be precluded from seeking unnecessary adjournments.

(RAVINDRA V. GHUGE, J.)

shp/-