

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3889 OF 2016

Shri Ganpule Datta Mandir Snsthan
& another

Petitioners

Versus

Sau Ratnaprabha Subhash Soman

Respondent

Mr. K.C. Sant, Advocate for the petitioners.

Mr. M.V. Bhamre, Advocate for the respondent.

CORAM : M.S. KARNIK, J.

DATE : 21st August, 2019.

PER COURT :

1. Order dated 22.01.2016 passed by the trial Court below Exhibit 119 is challenged in this petition.

2. Petitioners - original defendants filed application Exhibit 119 for setting aside "No Cross" order dated 27.11.2015. Trial Court rejected the application made by defendants for adjournment on 27.11.2015 and "No Cross" order was passed against the petitioners-defendants.

3. While rejecting the application, the trial Court observed that the suit is of the year 2013 and since 25.03.2014, the suit is pending for evidence of the plaintiff. The Roznama discloses that the proceeding was adjourned for more than a year by the petitioners as well as by the respondent. Despite of grant of sufficient opportunity defendants failed to take cross examination.

4. Learned counsel for petitioners submits that due to some urgent work the advocate for the defendants was out of station and therefore he could not communicate the order to the defendants. Learned counsel for petitioners would submit that for this communication gap the defendants' cause should not suffer. Learned counsel for petitioners states on instructions that the defendants would co-operate with the trial Court for expeditious disposal of the suit and would not seek unnecessary adjournments. Even learned counsel for respondent would submit that respondent-plaintiff is interested in expeditious disposal of the suit and would co-operate with the trial Court.

5. This Court, on 05.04.2016, directed the petitioners to deposit sum of Rs. 5,000/- in the trial Court within a period of four weeks to show their bonafides. The said amount has been deposited.

6. Considering that the petitioners' advocate could not remain present on the adjourned date as he was out of station which resulted in "No Cross" order, the petitioner deserves one opportunity in the interest of justice to cross examine the plaintiff. In this view of the matter, petition is allowed in terms of prayer clause 'B'. The order dated 22.01.2016, passed by the trial Court is set aside subject to payment of cost of Rs. 5,000/- which is already deposited in the trial Court to be paid to respondent. Parties to co-operate with the trial Court and not to seek unnecessary adjournment.

(M.S. KARNIK, J.)

dyb/