

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

22 WRIT PETITION NO.4776 OF 2016

RAJENDRA BHIVSAN PAWAR
VERSUS
RAJENDRA MADANLAL AGRAWAL

...

Advocate for Petitioner : Mr. Kulkarni Mukul S.
Mr. Deshpande C.R., Adv. For Respondent.

CORAM : P.R. BORA, J.
DATED : 15th July, 2019.

PER COURT:-

1. Since the application filed by the present petitioner, seeking to set aside 'no cross order' passed against him, has been rejected by the trial court, the present petition is filed.

2. The impugned order reflects that the trial court did not accept the request of the present petitioner having regard to his previous conduct. It is brought to my notice that the suit was for specific performance of the agreement. Learned counsel for petitioner submitted that the petitioner undertakes to promptly proceed with the matter and would not seek adjournment without any compelling circumstance.

3. Learned counsel appearing for the respondent strongly opposed for setting aside the order, invited my attention to the observations made in the said order as about the adjournments liberally obtained by the present petitioner and in spite of that his conduct of not proceeding with the suit.

4. The preposition that the matters are to be decided on merits cannot be disputed. It is informed that the petitioner was asked to deposit an amount of Rs.15,000/-, vide the order passed by this court on 2nd May, 2016, and accordingly the said amount has been deposited in the trial court. It appears to me that if the said amount is directed to be treated as costs to be paid to the present respondent and the trial court is directed to proceed with the suit from the stage onwards, that will serve the purpose. Hence, the following order, -

ORDER

i. The application filed by the petitioner at Exh.32 stands allowed subject to costs of Rs.15,000/-, which

(3)

the petitioner has deposited in the trial court. It would be open for the respondent to withdraw the said amount.

ii. The Trial court is directed to expedite hearing of the subject suit.

iii. The writ petition stands allowed in the above terms.

(P.R. BORA)
JUDGE

BDV