

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

WRIT PETITION NO.8851 OF 2012

Shrawan Gulba Mali

Age : 67 years, Occu : Agriculturist

R/o. Hol, Tq. Shindkheda,

Dist. Dhule

.. Petitioner

Versus

1. Nathu Gulba Mali

Age : 65 years, Occu : Service

R/o. Vinit House, Ram Bag-2,

Kalyan (West)

2. Chudaman Nattu Patil

Since deceased through his LRs

2A) Gokul Chudaman Patil

Age : 40 years, Occu : Agril,

R/o. Hol, Tal. Shindkheda,

Dist. Dhule

2B) Jitendra Chudaman Patil

Age : 35 years, Occu : Agril,

R/o. Hol, Tq. Shindkheda, Dist. Dhule

At present : Abhay High School,

Dhule, Dist. Dhule

2C) Kalpana Bhanudas Patil

Age : 30 years, Occu : Household,

R/o. Sonkhedi, Tal. & Dist. Dhule

2D) Surekha Suresh Patil

..... deleted as per Court's
order dated 08.11.2017

2E) Anusayabai Chudaman Patil

Age : 55 years, Occu : Household

R/o. Hol, Tal. Shindkheda, Dist. Dhule

3. Gokul Chudaman Patil

Age : 40 years, Occu : Agril,

R/o. Hol, Tal. Shindkheda, Dist. Dhule

4. Jitendra Chudaman Patil
Age : 35 years, Occu : Agril
R/o. Hol, Tal. Shindkheda,
Dist. Dhule
5. Ujawala Jitendra Patil
Age : 30 years, Occu : Household,
R/o. Hol, Tq. Shindkheda,
Dist. Dhule

.. Respondents

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Advocate for Petitioner : Shri S.P. Brahme

Advocate for Respdt Nos.1, 2A to 2C, 2E, 4 & 5: Shri M.M. Jadhav
h/f. Shri S.P. Shah

Respondent No.2D – deleted.

Respondent No.3 – Served.

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CORAM : P.R. BORA, J.

Dated: June 14, 2019

ORAL JUDGMENT :-

1. The order dated 19.10.2012 passed by Civil Judge, Jr. Division, Shindkheda below Exh.197 in Regular Civil Suit No.36 of 2000 is challenged by the petitioner in the present petition. The aforesaid application was filed by the petitioner, who is the plaintiff in the aforesaid Regular Civil Suit, with a prayer to set aside 'no cross' order dated 16.01.2010 passed by the aforesaid Court below Exh.64.

2. Shri Brahme, the learned counsel appearing for the petitioner submitted that, despite sufficient reasons assigned by the petitioner for setting aside 'no cross' order, the Trial Court has wrongly rejected the request of the petitioner, which has resulted in

miscarriage of justice. The learned counsel submitted that, in the relevant period the petitioner – plaintiff was sick and the learned counsel appearing for him in the matter was also not feeling well and in the circumstances, the matter remained unattended before the Trial Court. The learned counsel submitted that, in the meanwhile defendant-2 expired and the petitioner – plaintiff was required to take necessary steps for bringing on record the legal heirs of the deceased – defendant. In the circumstances, according to the learned counsel, the Trial Court must have given an opportunity to the petitioner – plaintiff to offer himself for completing the cross-examination and also to give further evidence. The learned counsel, therefore, prayed for setting aside the impugned order and consequently to allow the application filed by the petitioner – plaintiff at Exh.197 before the Trial Court.

3. Shri S.P. Shah the learned counsel appearing for the respondents opposed the submissions advanced on behalf of the petitioner. The learned counsel submitted that, the petitioner – plaintiff was throughout negligent in prosecuting his matter. The learned counsel further submitted that, ample latitude was already shown to the petitioner – plaintiff by the Court and despite that since the petitioner – plaintiff did not show due diligence in prosecuting his matter, the Trial Court had rightly rejected the request of the

petitioner – plaintiff. The learned counsel, in the circumstances, prayed for dismissing the petition.

4. I have duly considered the submissions advanced by the learned counsel appearing for the respective parties. I have perused the impugned order and the other material placed on record. The petitioner – plaintiff has filed the aforesaid civil suit seeking specific performance, injunction and declaration. The suit has been filed by the petitioner in June – 2000. The material on record reveals that, the plaintiff had filed his evidence affidavit on 06.04.2004 and he reaffirmed the contents of the said evidence affidavit before the Court on 01.07.2008. The cross-examination of the petitioner-plaintiff was commenced on the same date, but remained incomplete since the Court time was over. The matter was then adjourned to 15.07.2008. The petitioner-plaintiff, however, did not remain present on the said date for his cross-examination. The learned Civil Judge, therefore, passed the order of 'no cross' against him. The material on record further shows that, the petitioner-plaintiff thereafter filed an application at Exh.129 with a prayer to set aside the said 'no cross' order. Accordingly, the Court allowed the said application, however, even thereafter the petitioner-plaintiff did not remain present for his cross-examination. In the circumstances, it appears that, the Trial Court was constrained to pass 'no cross' order on 16.01.2010. The

record further reveals that, on 19.07.2007 an evidence affidavit of his witness was filed by the petitioner-plaintiff, however, the said witness also did not remain present for his cross-examination. The record further shows that, on 22.02.2010 the defendant filed evidence affidavit, the copy of which was served upon the petitioner-plaintiff. The cross-examination of the defendant was adjourned on the oral request of the counsel for the defendant. However, till 2012 no steps were taken by the petitioner-plaintiff to cross examine the defendant. The Trial Court while rejecting the application filed by the petitioner-plaintiff has categorically observed that, the petitioner-plaintiff has shown his negligent attitude throughout and has, therefore, rejected the application. Considering the material on record and more particularly having regard to the conduct of the petitioner-plaintiff as is revealing from the material on record, it does not appear to me that, any case is made out by the petitioner-plaintiff to cause any interference in the order passed by the learned Civil Court, which is impugned in the present petition. The petition being devoid of any substance, deserves to be dismissed and is accordingly dismissed.

5. The amount of Rs.5,000/- deposited by the petitioner-plaintiff under the orders of this Court be refunded to the petitioner.

(**PR. BORA, J.**)