

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

WRIT PETITION NO.13778 OF 2019

**SAYYED AKBAR KHAJASAB THROUGH LRS KAUSAR SAYYED AKBAR
AND OTHERS
VERSUS
RADHABAI NARSING DAKE AND OTHERS**

...
Advocate for the Petitioners : Shri Natu Sharad V. a/w Shri N.S.Shah
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th November, 2019

Per Court:

1 The petitioners, who are the original defendants in RCS No.44/2009, are aggrieved by the order passed by the Trial Court dated 19.09.2019, by which, the application exhibit 93 filed by the defendants praying for recalling the "no cross" order dated 19.07.2019, has been rejected.

2 I have considered the strenuous submissions of the learned advocate for the petitioners/ defendants and have gone through the petition paper book with his assistance.

3 I find from the record that the plaintiff has filed an affidavit in lieu of examination-in-chief on 15.02.2011. The first "no cross" order was passed by the Trial Court on 25.07.2013 after about 18 months. The said

order was recalled by the Trial Court on 27.01.2015. Yet, the petitioners did not cross-examine the plaintiff. The Trial Court then passed the second "no cross" order on 07.09.2015. The said order was also recalled by the Trial Court for the second time. Yet thereafter, the petitioners did not cross-examine the plaintiff. The third "no cross" order was passed on 14.06.2016, which was again recalled by the Trial Court on 21.11.2018 after about thirty months. It is shocking that even thereafter, the petitioners did not cross-examine the plaintiff on the ground that some compromise talks were going on and finally, the Trial Court passed the fourth "no cross" order on 19.07.2019.

4 Having considered the above factors, I find that the Trial Court had given four chances to the petitioners/ defendants over a period of eight years and six months to cross-examine the plaintiff. Any indulgence, if shown by this Court today, would not only cause travesty of justice, but would also amount to a mockery of law. I do not find that the Trial Court has committed any error in rejecting the application exhibit 93 and having refused to recall the fourth "no cross" order.

5 This Writ Petition being devoid of merit is, therefore, dismissed.