

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13730 OF 2018

Sunanda Krushnath Kamble	...	Petitioner
V/s.		
Sunil Ganpati Gadkari	...	Respondent

Mr. Abhijit M. Adagule for the Petitioner.
Mr. Drupad S. Patil for the Respondent.

CORAM : V.L. ACHLIYA, J.
DATE : 29th JANUARY, 2019.

P.C.:

1 By this Petition filed under Article 227 of the Constitution of India, the Petitioner/Original Defendant has challenged the order dated 24.09.2018 passed by the learned Civil Judge, Junior Division, Panhala, District Kolhapur. By the impugned order the learned Judge of the trial Court rejected the application moved by the Petitioner/Defendant to set aside 'no cross order' and allow the Petitioner to conduct further cross-examination of witness for Plaintiff.

2 Learned Counsel for the Petitioner submits that the Advocate representing the Petitioner could not remain present on the day appointed

to conduct further cross-examination of plaintiff's witness as he was unwell. It is submitted that in case the Petitioner is not permitted to conduct further cross-examination, there is every likelihood that he may suffer serious prejudice.

3 On the other hand learned Counsel for the Respondent/Plaintiff submits that the conduct of the Petitioner itself sufficient to refuse to entertain the Petition. It is submitted that earlier similar order to proceed without cross-examination was passed against the Petitioner due to his failure to cross-examine the witness for the Plaintiff. The trial Court has acted liberally and entertained the application moved by the Petitioner to set aside the order. He was allowed to cross-examine the witnesses. Subsequent thereto the Petitioner repeatedly sought adjournment. The witness was partly cross-examined on 18.06.2018. Thereafter, the Petitioner has again moved an application seeking an adjournment to cross-examine the witness, which came to be rejected. In this background the learned Counsel submits that the order passed by the trial Court calls for no interference in exercise of writ jurisdiction.

4 Having considered the submissions advanced, I am of the view though the order passed by the trial Court cannot termed as perverse or suffers from any illegality, still I am of the view that in the larger interest of the justice, the order deserves to be set aside and one more opportunity be given to Petitioner to cross-examine the witness so as to avoid serious prejudice being caused to him in absence of cross-examination of witness. Hence the following order :

Order

i) The Petition is allowed in terms of prayer clause (b) subject to cost of Rs.10,000/- (Rupees Ten Thousand only) to be payable by the Petitioner to the Respondent on or before 04.02.2019. Payment of cost shall be condition precedent to cross-examine the witness for Plaintiff.

ii) Petitioner and the Respondent are directed to appear before the Court on 04.02.2019 i.e. date fixed before the trial Court.

iii) On appearance of the parties, the trial Court is directed to fix the date for conduct of further cross-examination of witness by the Petitioner.

iv) The Petitioner along with his Advocate shall appear before the Court on the date and time as fixed by the trial Court and conduct further cross-examination of witness. Failure to appear on the date fixed

by the Court and to conduct the cross-examination of witness, the Court will be at liberty to pass appropriate order in the matter.

v) Parties to co-operate in expeditious disposal of case by trial Court.

5 The Writ Petition is disposed of in above terms with no order as to costs.

6 All concerned to act upon the authenticated copy of this order.

(V.L. ACHLIYA, J.)