

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9891 OF 2011

Ambaji R. Joshi .. Petitioner
vs.
Narendra P. Jain and ors. .. Respondents

Mr. K.S.Patil a/w. Ms Heena S. for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 12 APRIL 2019.

P.C. :-

- 1] Heard Mr. K.S. Patil for the petitioner.
- 2] The challenge in this petition is to the order dated 21st September 2011 by which learned Trial Judge has dismissed the petitioner's application to set aside '*no cross order*' made against the petitioner on 24th February 2011.
- 3] From perusal of the application on which the impugned order came to be passed, it is apparent that absolutely no cause was shown for the petitioner to not avail of the opportunity of cross-examination, though, such opportunity was from time to time granted to the petitioner. Accordingly, there is no error whatsoever in the making of the impugned order.

4] That apart, the petitioner, secured interim relief in this petition thereby staying further progress in the respondent's suit which was instituted in the year 2010. This stay order was secured by the petitioner *ex parte* on 13th January 2012. Thereafter, for a long period there was no proper service effected upon the respondents. From time to time extension was sought to effect the service and this process went on for several years. In the meanwhile, the stay on the suit which was about to be disposed of continued.

5] It is obvious that the petitioner has not taken proper steps to effect service upon the respondents after having secured the ad-interim *ex parte* order.

6] In these circumstances, the matter was adjourned from morning session to the afternoon session in order to enable the learned counsel for the petitioner to make a statement as to whether the petitioner was volunteering payment of substantial costs. Learned counsel for the petitioner, in the afternoon session, states that the petitioner is not willing to volunteer for payment of any costs.

7] The petitioner, has abused the process of this Court. There is no infirmity in the impugned order. Accordingly, this petition is dismissed with costs of Rs.10,000/- payable by the petitioner to the respondent - plaintiff within a period of six weeks from today. Such costs to be deposited before learned Trial Court within six weeks from today. Upon deposit, the respondent - plaintiff is at liberty to withdraw the same unconditionally.

8] Ad-interim order granted earlier is vacated. Learned Trial Judge is directed to dispose of the suit, on its own merits as expeditiously as possible and in any case within a period of four months from today.

9] The petitioner is directed to file an authenticated copy of this order before the Trial Court on 30th April 2019 at 11.00 a.m. In any case, Registry of this Court is directed to forward the copy of this order to the Court of Civil Judge, Junior Division, Roha, Raigad taking upon R.C.S.No. 51 of 2010 within a period of 15 days from today.

10] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)