

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

WRIT PETITION NO.8 OF 2015

Pimpri Chinchwad Municipal Corporation ... Petitioner

Vs

Bapu Dnyanoba Jadhav ... Respondent

...

Mr. Deepak R. More for the Petitioner.

CORAM : SANDEEP K. SHINDE J.

DATE : JUNE 19, 2019

P.C. :

Heard learned counsel for the petitioner. None for the respondent.

2 Respondent instituted the Regular Civil Suit No.56 of 2013 in the Court of Civil Judge, Senior Division, Akurdi, Dist: Pune seeking a declaration that communication dated 18th April, 2013 concerning cancellation of tax assessment entry by the Respondent-Corporation is illegal.

3 The issues were framed on 1st January, 2014 and the plaintiff had filed evidence affidavit on 21st August, 2014. On the given date, respondent-Corporation was present. The matter was

adjourned to 5th September, 2014 and again adjourned to 5th November, 2015. Advocate for the Corporation was present before the Court throughout, as is evident from Roznama, which is placed on record. On 5th November, 2014, Respondent-Corporation's advocate was busy in another Court and could not remain present to cross-examine the witness in the first session. The trial Court, therefore, passed the order of 'No Cross' on 5th November, 2014. On the same day, in the second session, respondent-Corporation filed an application and requested the Court to set aside 'No cross' order and permit the Corporation to lead the evidence. The learned Judge without recording any reasons rejected the said application with cryptic order; 'No good reason' shown. Hence, rejected.

4 It is against this order, the Petition is preferred by the Corporation. This Court vide order dated 22nd December, 2014, stayed proceedings in the Regular Civil Suit No.56 of 2013. Roznama clearly shows that Corporation was diligent in defending the suit filed by respondent no.1. On 5th November, 2014, since advocate of the Corporation was busy in another Court, he could not cross-

examine plaintiff's witness in the first session; however, on the very date, he filed an application and requested the Court to set aside 'No cross' order and permit Corporation to lead evidence. The learned Judge in the given set of facts ought to have permitted Corporation to cross-examine the plaintiff's witness. Roznama placed on record does not indicate that the Corporation on the scheduled dates was absent before the Court. In fact, Corporation's lawyer was present throughout but for the reasons stated in the application, he could not reach the Court in the morning session as he was busy in another Court. The learned Judge, therefore, ought to have adopted liberal approach and set aside the order of 'no cross' passed on 5th November, 2014. That for the reasons stated hereinabove, petition is allowed and the order dated 5th November, 2014 passed below Exhibit 64 is quashed and set aside. The learned Judge shall permit Corporation to cross-examine plaintiff's witness and lead its evidence. Petition is allowed in the aforesaid terms.

(SANDEEP K. SHINDE, J.)