

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4755 OF 2019

Tukaram Vithoba Devlekar

...Petitioner

vs.

Ramu Dadu Wakse

(Since deceased through LRs.) and Ors.

...Respondents

Mr. J.M. Joshi, for the Petitioner

Mr. M.N. Dhamal, for Respondent No.1A.

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

JUDGMENT:

. Heard Mr. J.M. Joshi, learned counsel for the Petitioner and Mr. M.N. Dhamal, learned counsel for the Respondent No.1A who is contesting Respondent.

2. For the order which is proposed to be made, the presence of remaining Respondents is really not necessary. Hence, rule. Rule is made returnable forthwith.

3. The challenge in this Petition is to the orders dated 17th October, 2018 by which the Petitioner-original Plaintiff was precluded from cross examining Respondent No. 1A – Defendant No.1A in the suit.

4. From the perusal of the impugned orders dated 16th August, 2018 and 17th October, 2018, I am satisfied that the additional opportunity was required to be given to the Petitioner to complete the cross examination of Respondent No.1A. No doubt, in the past opportunities had been granted to the Petitioner, however, the reason for which the Petitioner could not avail of this opportunity was that his advocate was unwell and unable to attend the proceeding. No doubt, as observed by the learned trial Judge, the Petitioner could have made arrangement for engaging different counsel after adjournments were granted on more than two occasions. Nevertheless in the peculiar facts of the present case, an additional opportunity is required to be granted to the Petitioner subject to payment of costs.

5. Accordingly, the impugned orders dated 16th August, 2018 and 17th October, 2018 are hereby set aside.

6. The Petitioner is granted yet another opportunity to cross examine the Respondent No. 1 on the date to be appointed by the learned trial Judge. This shall however subject to the Petitioner's paying to Respondent No. 1A or deposit in the trial Court, costs of

Rs. 5,000/- within a period of four weeks from today.

7. If the costs are paid/deposited, the Respondent No. 1A is granted unconditional liberty to withdraw the same.

8. If however no costs are paid/deposited within four weeks from today, then this Petition shall deemed to have been dismissed with costs of Rs. 5,000/-.

9. Rule is made absolute in the aforesaid terms.

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

(M. S. SONAK, J.)