

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1487/2019

Gajanan Gyansing Pawar and others

..Vs..

Smt. Anusayabai Gyansing Pawar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abhay Bhide, Advocate for the petitioners.

CORAM : Z.A. HAQ, J.

DATE : 28.2.2019.

Heard.

The original defendant Nos.2, 5 and 7 have filed this petition to challenge the order passed by the trial Court by which the application (Exh. No.127) filed by them is dismissed. By this application (Exh. No.127), the defendant Nos.2, 5 to 7 prayed that the order passed by the trial Court on 23rd November, 2018 directing that the civil suit shall proceed without cross-examination of the plaintiff's witnesses Sonal Pawar and Kishor Wamanrao Susatkar, be set aside and they be permitted to cross-examine the two witnesses.

The facts on record show that affidavit in lieu of examination-in-chief of Sonal Pawar was filed on 9th June, 2017 and then she was examined on 17th February, 2018. The defendant Nos.2, 5 to 7 had sought adjournment which was granted. On subsequent dates i.e. 3rd March, 2018 and 17th March, 2018 also Sonal Pawar was not cross-examined and, therefore, the trial Court passed an order foreclosing the right of the

defendant Nos.2, 5 to 7 to cross-examine Sonal Pawar. The defendant Nos.2, 5 to 7 had filed an application (Exh. No.120) praying that the order foreclosing their right to cross-examine Sonal Pawar be set aside and they be permitted to cross-examine the witness. The trial Court had allowed the application subject to deposit of costs of Rs.500/-. The defendants failed to deposit the amount of costs and also to cross-examine Sonal Pawar. Then the affidavit in lieu of examination-in-chief of Kishor Susatkar was filed on 24th April, 2018. After filing of affidavit of Kishor Susatkar, the defendants filed application (Exh. No.127) which is dismissed by the impugned order.

Learned Advocate for the defendant Nos.2, 5 to 7 has pointed out that the examination-in-chief of Kishor Susatkar is conducted on 23rd November, 2018 and it cannot be said that the defendants protracted the matter by delaying the cross-examination of Kishor Susatkar.

The application (Exh. No.127) is decided by the learned trial Judge on 19th January, 2019. The petitioners / defendant Nos.2, 5 to 7 have not pointed out what prevented them from cross-examining Kishor Susatkar on 23rd November, 2018 when his examination-in-chief was conducted. The petitioners have not pointed out that why application seeking permission to cross-examine Kishor Susatkar was not moved before the trial Court and why it was insisted that application (Exh. No.127) should be decided. The petitioners should have

cross-examined Kishor Susatkar before pressing the application (Exh. No.127).

Considering the facts of the case, I concur with the conclusions of the learned trial Judge. It is clear that the defendant Nos.2, 5 to 7 made all possible attempts to prolong the matter and there are no *bona fides* on their part. Hence I am not inclined to interfere with the impugned order. The writ petition is **dismissed**. No costs.

JUDGE