

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

**WRIT PETITION NO.4621/2019**

Anita Yashwant Deshpande and another

..Vs..

Prabhakar Trimbak Pingale and others

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

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Shri Tejas J. Patil, Advocate for the petitioners.

**CORAM : Z.A. HAQ, J.**

**DATED : 8.7.2019.**

Heard.

The original defendant Nos.4 and 5 have challenged the order passed by the trial Court rejecting the application (Exh. No.128) filed by them praying that the orders passed on 16<sup>th</sup> November, 2017 and 24<sup>th</sup> January, 2019 directing that the civil suit to proceed further without cross-examination of defendant Nos.1 and 2 by defendant Nos.4 and 5, be set aside. The defendant Nos.4 and 5 contended that lawyer representing them died in August, 2018 and the defendant Nos.4 and 5 are married and residing in some other town and, therefore, the matter went unrepresented till they engaged another lawyer in January, 2019. Learned trial Judge found that the explanation given by the defendant Nos.4 and 5 is not correct. The conclusions of learned trial Judge are recorded in paragraph No.6 of the impugned order as follows:

“6. Heard learned advocates. They

argued to the tune of application and reply. Perused the record. Perused written statement of defendant nos.4 & 5. Interest of defendant nos.4 & 5 is not appeared adverse to the plaintiff except the issue of ownership over the suit plot. It is pertinent to note that defendant nos.4 & 5 filed this application to cross-examine the witness of defendant nos. 2 & 3. On 16.11.2017 the right of defendant nos.4 & 5 to cross-examine the witness of defendant nos.2 & 3 observing No-instruction pursis by their learned advocate. On 10.01.2019 the defendant nos.4 & 5 though appeared but not filed any application. The plaintiff cross-examined the witness of defendant nos.2 & 3 on 24.01.2019. Thus defendant nos.4 & 5 could examined the witness of defendant nos.2 & 3 before the plaintiff. The contention that on 24.01.2019 the defendant nos.4 & 5 appointed new advocate is not true. While passing the order on 16.11.2017 this court observed that interest of defendant nos.4 & 5 is adverse to the interest of plaintiff to some extent. Under such circumstances, after cross-examination of witness by plaintiff such permission may wash out the cross-examination of plaintiff or fill up the lacuna in the cross-examination. The appointment of new advocate cannot be the ground to set aside the orders earlier passed. Hence, it will not be appropriate to set aside the order dated 16.11.2017 and give permission for cross-examination of witness of defendant nos.2 & 3 after cross-examination of witness of defendant nos.2 & 3 after cross-examination of plaintiff. Hence, the order.

The application is rejected with costs of Rs.500/- to be paid to the plaintiff, and costs of Rs.500/- to be paid to the

*defendant nos.2 & 3 in all.”*

It is clear that the defendant Nos.4 and 5 deliberately failed to attend the proceedings and created a situation that plaintiff was required to cross-examine the witness of defendant Nos.1 and 2, though trial Court had passed an order that the witness Nos.1 and 2 should be cross-examined first by defendant Nos.4 and 5.

I concur with the conclusions of learned trial Judge. I see no reason to interfere with the impugned order. Hence, writ petition is **dismissed**. No costs.

JUDGE