

1. Heard both the sides.
2. The petitioner is the original defendant in Regular Civil Suit No.28 of 2012. The trial Court has passed 'no cross' order against the petitioner - original defendant on 06.04.2016 below Exhibit-25 and even though the order came to be set aside by order dated 19.09.2016 below Exhibit-58 with the direction that the petitioner to take cross-examination of P.W.1 without fail on next date, the petitioner has failed to cross examine the P.W.1. The petitioner has filed an application Exhibit-68 for setting aside the 'no cross' order. The trial Court has rejected the said application. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the suit is instituted for specific performance of contract in respect of immovable property. The petitioner is ready to pay the costs. He may be given one last opportunity to cross-examine the plaintiff and his witnesses.

4. Learned counsel for respondent - original plaintiff submits that the respondent - plaintiff has filed his affidavit of evidence on 07.10.2011 and the suit is pending since 2010. The petitioner has failed to cross-examine the plaintiff despite repeated chances and therefore, 'no cross' order was passed on 06.04.2016. Even though the said order is set aside, the petitioner has failed to cross-examine the witnesses of plaintiff. Learned counsel submits that the respondent - plaintiff by filing pursis (Exhibit-57) closed his evidence and the matter is now kept for evidence of the petitioner - defendant. Even though the order of 'no cross' came to be set aside with the directions to the petitioner - defendant to cross-examine the plaintiff without fail, instead of cross-examining the P.W.1, the petitioner - defendant filed an application for framing the preliminary issues. Learned counsel submits that the petitioner is playing all sort of tactics to delay the trial of suit. At present, the suit is kept for arguments. There is no substance in this writ petition. The writ petition is liable to be dismissed.

5. Learned counsel in the alternate submits that if this Court is inclined to allow the petition heavy costs may be imposed.

6. Though there is delay for cross-examining the respondent - plaintiff and the petitioner - defendant is playing all sort of tactics to prolong the matter, however, the matter pertains to immovable property and one more opportunity as a last chance is necessary to be given to the petitioner - defendant. Learned counsel for the petitioner - defendant also accepts that in case, if the impugned order is set aside on costs, the petitioner - defendant is having no objection if the respondent - plaintiff examines the other witnesses. It is also a part of record that since the 'no cross' order was not set aside by the trial court, the respondent - plaintiff has submitted the 'evidence closed' pursis. Thus, in view of the discussion above and in the interest of justice, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby allowed.

(II) The impugned order dated 06.03.2017 passed by the 2nd Jt. Civil Judge, Junior Division, Shirpur, District Dhule, below Exhibit-68 in Regular Civil Suit No.28 of 2012 is hereby quashed and set aside.

(III) The application Exhibit-68 in RCS No.28 of 2012 is hereby allowed in terms of its prayer clause, subject to costs of Rs.25000/- to be paid to the respondent - original plaintiff by the petitioner - original defendant within two weeks from the date of this order.

(IV) The respondent - plaintiff is at liberty to adduce oral evidence in support of his pleadings with the leave of the Court and strictly in terms of the list of the witnesses and if not submitted earlier, if submitted henceforth.

(V) The writ petition is accordingly disposed of.

7. Needless to say that the petitioner - defendant is also at liberty to adduce oral and documentary evidence in support of his rival contentions.

8. By consent, the trial Court is hereby directed to dispose of the suit as expeditiously as possible, preferably within a period of one year from the date of this order.

(V. K. JADHAV, J.)