

Anand

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

**WRIT PETITION NO. 11987 OF 2019**

Droupadi Balkrishna Patil & ors.

.Petitioners

Vs.

Baburao Bhupal Shetty

.Respondent

Mr. Vikrant A. Desai, Advocate, for the Petitioners

Mr. N. R. Bubna i/b. Mr. Wasif Mohd. Fuzail Akil, Advocate, for the Respondent

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 24.01.2020**

**P. C.**

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 02.04.2019 passed by the learned Jt. C. J. J. D., Ichalkaranji, Kolhapur, below Exh. 77 in R. C. S. No. 330 of 2012, by which the Petitioners' Application to set aside "No cross order" passed at Exh. 53 was rejected.

3. Learned counsel for the Petitioners submits that on 20.02.2019, when the learned Judge set aside the earlier order of "No cross", concerned Advocate on record who was to conduct the cross could not remain present on the said date, as he had undergone surgery on his left knee. He submits that in this view of the matter, the

learned Judge ought to have adjourned the proceedings on 20.02.2019, in order to enable the Petitioners' Advocate to conduct the cross-examination of Shantinath Hatigne.

4. The aforesaid Petition is vehemently opposed by the learned counsel appearing for the Respondent.

5. Perused the papers. The Respondent ( Original Plaintiff ) has filed a suit in the Court of the learned Jt. C. J. S. D., Ichalkaranji, Kolhapur ( R. C. S. No. 330 of 2012 ) for specific performance of a registered Agreement dated 22.12.1998. The Petitioners ( Original Defendants ) resisted the suit and filed their Written Statement. Thereafter, issues were framed in the said suit on 04.11.2016 and on 16.03.2017, the Respondent ( Original Plaintiff ) filed his Affidavit of evidence ( Exh. 52 ), pursuant to which, it appears that the matter was adjourned to 17.06.2017. On the said date, as the Petitioners and their Advocate were absent, the learned Judge passed an order of "No cross" against the Petitioners. The Petitioners filed an Application ( Exh. 58 ) for setting aside the order of "No cross", which was allowed by the learned Judge by imposing costs of Rs. 4,000/- payable to the Respondent ( Original Plaintiff ). The said order was passed on 23.11.2017. The matter was again posted from time to time and again, as the Petitioners failed to cross examine the witness i. e. Shantinath Hatigne, the learned Judge again passed an order of "No cross" on

21.11.2018. Again the Petitioners filed an Application for setting aside the order of “No cross” dated 21.11.2018 which was again set aside by the learned Judge vide order dated 20.02.2019 subject to the Petitioners’ paying costs of Rs. 5,000/- to the Respondent ( Original Plaintiff ). The said order is on page No. 55 of the Petition. It appears that as soon as the said order was passed, the Petitioners filed an Application praying for an adjournment on the ground that the Petitioners’ Advocate who was to conduct the cross examination was admitted to the hospital for knee surgery and as such, sought adjournment of the proceedings. The said adjournment Application was rejected. Again the Petitioners filed another Application on 18.03.2019. Pursuant to which the impugned order dated 02.04.2019 was passed. Today, learned counsel for the Petitioners states on instructions that the Petitioners and their Advocate will remain present on 03.02.2020 before the learned trial Court. He submits that neither the Petitioners nor their Advocate will seek any adjournment on any ground and that the Advocate will proceed with the cross examination of the witness – Shantinath Hatigne. Learned counsel for the Respondent also states that he will keep his witness present on the next date i. e. 03.02.2020 to enable the Petitioners’ Advocate to take cross examination.

6. In view of the statement made by the learned counsel for the Petitioners and only by way of indulgence and to give last opportunity to the Petitioners, the impugned order dated 02.04.2019

passed by the learned Jt. C. J. J. D., Ichalkaranji, Kolhapur, below Exh. 77 and Exh. 53 ( “No cross order” ) in R. C. S. No. 330 of 2012 are quashed and set aside subject to the Petitioners’ paying costs of Rs. 10,000/- to the Respondent within ten days from today. It is made clear that if the Petitioners and his Advocate are not present on 03.02.2020 or any other date given by the trial Court for cross examination of the witness Shantinath Hatigne, the learned Judge may pass such orders he may deem fit having regard to the conduct of the Petitioners. Considering that the suit is of the year 2010, the same is also expedited. The learned Judge to conclude the same as expeditiously as possible and in any event within six months from the date of receipt of this order.

7. Accordingly, the Petition is allowed and disposed of.

8. All parties to co-operate in the conduct of the trial. **Registrar in the trial Court to accept Rs. 5,000/- as directed vide order dated 20.02.2019 within ten days from today which was payable to the Respondent.**

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

**(REVATI MOHITE DERE, J.)**