

Anand

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

WRIT PETITION NO. 1751 OF 2020

Smt. Sunanda Shridhar Salvi & ors.

.Petitioners

Vs.

Vishwanath Vasudeo Kale

.Respondent

Mr. G. Shah i/b. Mr. O. K. Shaikh, Advocate, for the Petitioners
Mr. I. Koparkar, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 25.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 14.10.2019 passed by the learned C. J. J. D., Guhagar, District – Ratnagiri below Exh. 59 in R. C. S. No. 40 of 2014, by which the learned Judge was pleased to reject the Petitioners’ Application (Exh. 59) for setting aside the order of “No Cross” passed against them on 19.07.2019.

3. Learned counsel for the Petitioners submits that the Petitioners (Original Defendants) had sought a date in the trial Court on 05.07.2019, as the Petitioners’ Advocate’s father was unwell, pursuant to which the trial Court adjourned the proceedings to

19.07.2019. He further submits that on 19.07.2019, the Petitioners' Advocate could not remain present in the trial Court, as the Advocate had gone to Khed to conduct another matter, pursuant to which, the trial Court passed an order of "No Cross". Learned counsel for the Petitioners on instructions of the Petitioners states that the Petitioners will not seek any adjournment and will proceed with the cross-examination of the Plaintiffs' witness i. e. PW.1 on the next date.

4. Learned counsel for the Respondent opposes the Petition and submits that no interference is warranted in the impugned order.

5. Perused the papers including the impugned order. It appears from the Application filed by the Petitioners for setting aside the order of "No Cross" that on 05.07.2019, as the Petitioners' Advocate was unwell, the Advocate could not remain present before the trial Court, as a result of which the matter was adjourned to 19.07.2019. It appears that on 19.07.2019, again the Advocate failed to remain present, as the Advocate had gone to Khed, pursuant to which the trial Court rejected the Petitioners' request for adjournment and passed an order of "No Cross". Prima facie, no fault can be found in the order dated 19.07.2019 of "No Cross" nor can any infirmity be found in the impugned order dated 14.10.2019, by which the Petitioners' Application for setting aside the order of "No Cross" was rejected. However, having regard to the

statement made by the learned counsel for the Petitioners on instructions of the Petitioners that the Petitioners will under no circumstance seek any adjournment on the next date before the trial Court and will proceed with the cross-examination of the Plaintiff, in the interest of justice, the impugned order dated 14.10.2019 passed by the learned C. J. J. D., Guhagar, District – Ratnagiri below Exh. 59 in R. C. S. No. 40 of 2014 as well as the order dated 19.07.2019 of “No Cross” are quashed & set aside, subject to the Petitioners paying costs of Rs. 7,500/- to the Respondent on 03.03.2020. All contentions of all parties are kept open.

6. Accordingly, the Petition is disposed of.

7. Parties to remain present before the trial Court on 03.03.2020 to enable the trial Court to proceed with the cross-examination of the Plaintiff’s witness i. e. PW.1 on 03.03.2020 or on any other date as the trial Court may deem fit and proper.

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

(REVATI MOHITE DERE, J.)