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

WRIT PETITION NO.706 OF 2020

Geeta Sanjay Ahade	... Petitioner
Versus	
State of Maharashtra and Anr.	...Respondents

Ms. Antika Singhanian a/w Ms. Bindu Thomas, Ms. Nilofer Sayed i/b Shweta Rathod and Prashant Mairale, for the Petitioner.

Mr. Y. D. Patil, A.G.P for the Respondent No.1 - State.

Mr. R. N. Kachare, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 27th JANUARY, 2020

P.C. :

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned AGP waives service on behalf of Respondent No.1 - State and learned counsel, Mr. Kachare, waives service on behalf of Respondent No.2.

3. By this Petition, the Petitioner has impugned the order dated 10th January, 2020, passed by the learned 1st Additional Principal Judge,

City Civil Court at Dindoshi Mumbai, below Exhibit –45 in Civil Suit No.1624 of 2011, by which the petitioner's application for adjournment was rejected and the cross-examination of the Respondent No.2 (original plaintiff) was closed.

4. Perused the papers. The respondent no.2 is the original plaintiff, who has filed a Suit, being Civil Suit No.1624 of 2011, in the City Civil Court at Dindoshi Mumbai, for permanent injunction as against the Petitioner (original defendant) in respect of certain immovable properties mentioned in the plaint. It appears that written statements were filed by all the defendants, including the petitioner and thereafter issues were framed. In 2018, Respondent No.2's (plaintiff) witness i.e. PW1 stepped in the witness box. After the affidavit of evidence was tendered, cross-examination of the said witness commenced. It appears that between the period 2018 to 2020, the matter was posted on various dates for cross-examination of PW1. A perusal of the Roznama tendered by the learned counsel for the petitioner (defendant) shows that the said Suit was adjourned on several dates for recording of the evidence either by consent or for want of time or on some occasions at the behest of the individual parties. The three dates which are relevant and which are mentioned in the impugned order dated 10th January, 2020 for rejecting the petitioner's

application for adjournment (Exhibit – 45) are as under:-

1. 9th February, 2018
2. 13th November, 2018 and
2. 14th December, 2018

5. It appears from a perusal of the Roznama dated 9th February, 2018, that the case was adjourned by consent of both the parties to 14th February, 2018. On 13th November 2018, the petitioner's advocate filed an application (Exhibit – 41) and sought an adjournment. The Respondent No.2 objected to the grant of any adjournment, pursuant to which, the learned trial Judge allowed the adjournment application, subject to the petitioner paying costs of Rs.3,000/- to the Respondent No.2 and accordingly, the matter was adjourned to 14th December, 2018. A perusal of the roznama dated 14th December, 2018, shows that the respondent no.2's witness i.e. PW1 was absent and hence the matter was adjourned for cross-examination of PW1 to 21st January, 2019. Thereafter, the matter could not proceed as the Court was on leave. On 20th April, 2019, the matter was kept for discarding evidence of PW1, however, PW1 appeared before the Court and hence in the interest of justice the matter was adjourned for cross-examination of PW1 on 11th June, 2019. On 11th June, 2019, Respondent no.2's advocate sought an adjournment, which was

granted subject to payment of costs of Rs.5,000/- by the respondent no.2 (original plaintiff). It is recorded in the said roznama that if PW1 failed to remain present, his evidence will be discarded and the matter was kept for cross-examination of PW1 on 26th July, 2019. Thereafter it appears that on the few dates the Court was on leave and on few dates both the parties and their advocates were absent and hence the matter was adjourned. On 20th December, 2019, the petitioner's advocate filed an adjournment application as the advocate appearing for the petitioner had replaced the earlier advocate. The new advocate undertook to file the vakalatnama on behalf of the said petitioner. Since, the new advocate was appearing on that day, as a matter of leniency and by way of indulgence, one last opportunity was given to the petitioner, subject to payment of costs of Rs.5,000/- to PW1. It was made clear in the said order dated 20th December, 2019, that on no ground any further adjournment will be granted and that if the petitioner/defendant failed to proceed on the next date, automatically the cross-examination of PW1 will stand closed. Accordingly, the matter was adjourned for cross-examination of PW1 to 10th January, 2020. On 10th January, 2020, again the petitioner's advocate filed an application (Exhibit – 45) and sought adjournment. The learned Judge after noting certain dates, rejected the said application and closed the cross-examination of PW1. Although some of the dates mentioned in the

impugned order are factually incorrect, the fact remains that the petitioner's advocate was granted sufficient opportunity for conducting the cross-examination of PW1. Infact, the order dated 20th December, 2019 clearly shows that only by way of last chance and indulgence and subject to payment of costs of Rs.5,000/- the adjournment application filed by the petitioner's advocate was allowed. Infact, the said order dated 20th December, 2019 clearly shows that it was made clear to the advocate for the petitioner that on no ground any further adjournment will be granted and that if the petitioner fails to proceed on the next date, the cross-examination of PW1 will stand closed. In view of the same, the learned Judge rejected the adjournment application of the petitioner on 10th January, 2020 and closed the cross-examination of PW1.

6. In the facts considering the conduct of the petitioner, no infirmity can be found in the said order dated 10th January, 2020. However, by way of indulgence and last chance, in view of the statement made by the learned counsel for the Defendant/Petitioner that the advocate for the Petitioner will not seek any adjournment and will co-operate in the conduct of the cross-examination of PW1, the following order is passed:-

ORDER

i) The impugned order dated 10th January, 2020, passed by the learned

1st Additional Principal Judge, City Civil Court at Dindoshi Mumbai, below Exhibit –45 in Civil Suit No.1624 of 2011, is quashed and set aside;

- ii) All parties alongwith their advocate to remain present tomorrow i.e. 28th January, 2020, before the learned trial Judge, after which, the learned Judge shall give a date on which PW1 will remain present and the petitioner's advocate will proceed with the cross-examination of PW1;
- iii) If for any reason, the petitioner does not proceed with the cross-examination of PW1 on the dates given by the trial Court, the trial Court is at liberty to pass appropriate orders.

7. Learned Counsel for the Petitioner on instructions of the Petitioner undertakes that no adjournment will be sought on the dates given by the trial Court for cross-examination of PW1. Statement accepted.

8. The Petition is allowed, subject to the petitioner paying costs of Rs.15,000/- to the Kirtikar Law Library, A.A.W.I, Mumbai. The said costs to be paid within two weeks from today. Rule is made absolute in the aforesaid terms.

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

REVATI MOHITE DERE, J.