

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3486 OF 2016

Suresh Shripati Kadam & Ors.

...Petitioners

Vs.

Shree Viththaldev and Kashivishweshwar
Dev, Public Trust Through Trustees

...Respondents

Mr. Kedar Lad, Advocate for the Petitioners.

CORAM : A.S. GADKARI, J.
DATE : 11th MARCH, 2020.

PC. :

. Heard learned counsel for the petitioners.

2. The report submitted by Bailiff dated 29th September, 2016 indicates that respondents have been duly served in the matter. Despite service none appears for the respondents.

3. By the present petition, the petitioners have impugned Order dated 12th December, 2013 passed below Exh.16, rejecting their application for setting aside the Order dated 5th December, 2013. By the said Order dated 5th December, 2013, the Trial Court has debarred the petitioners/original defendants from conducting cross-examination of the plaintiffs, as “No Cross” order is passed against them. The record further indicates that, on 12th December, 2013 the petitioners/original defendants filed application below

Exh.16 for setting aside the order dated 5th December, 2013. It is recorded in the impugned Order that, Advocate for the defendants was not ready to cross-examine the plaintiff, though the plaintiff was present in the Court since 11.00 a.m. on that particular date. The record further indicates that, the respondent/original plaintiff had filed say to the said application below Exh.16, recording their objection and had further stated that, the said application may be allowed subject to costs of Rs.2,000/-.

It does appear that, the respondent/original plaintiff have no serious opposition in allowing the application filed below Exh.16, by the petitioners for setting aside “No Cross” Order passed by the Trial Court dated 5th December, 2013.

4. In view thereof, the Order dated 12th December, 2013 passed below Exh.16 is hereby set aside, subject to payment of cost of Rs.5,000/- by the petitioners to the “District Legal Services Authority”, District Kolhapur. The said costs be paid within a period of two weeks from today without seeking any further extension in that behalf.

It is further noted that, the payment of cost is condition precedent for setting aside the Order dated 12th December, 2013 passed below Exh.16.

5. The petition is accordingly allowed in terms of prayer clause (a).

[A.S. GADKARI, J.]