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

WRIT PETITION NO.9886 OF 2019

Dilip Vasant Horne

... Petitioner

Versus

Aagari Samaj Dharmashala Shrishetra,
Pandharpur, President and Ors.

...Respondents

Mr. A. A. Joshi, for the Petitioner.

Mr. S. S. Punde, for the Respondent Nos.1, 3 and 4.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th JANUARY, 2020

P.C. :

1. At the outset, learned counsel for the petitioner seeks leave to amend the petition. Leave granted. Amendment to be carried out forthwith.
2. Heard learned Counsel for the parties.
3. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Mr. Punde, waives service on behalf of Respondent Nos.1, 3 and 4.
4. By this petition, the petitioner has impugned the order dated 31st October, 2018, passed below Exhibit – 118, by which the petitioner's

application for adjournment was rejected as well as the order dated 1st January, 2019, passed below Exhibit – 121, both by the learned Joint Civil Judge, Junior Division, Pandharpur, in R.C.S. No.598 of 2007.

5. Perused the papers as well as the impugned orders. The petitioner is the original plaintiff and the respondent no.1 (original defendant no.1) is the contesting respondent in the aforesaid petition. The petitioner (original plaintiff) has instituted Regular Civil Suit No.598 of 2007 in the Court of the learned Civil Judge, Junior Division, Pandharpur, as against the respondents and has sought a decree of perpetual injunction, in respect of the suit property. The respondent no.1 (original defendant no.1) is a Public Trust and other respondents are the Trustees of the said Trust. In the said suit, the respondents (original defendants) appeared and filed their written statement. It appears that the trial proceeded and the plaintiff examined its witness. When the defendant no.1's witness stepped in the witness-box, the petitioner's advocate conducted part cross-examination of the said witness on 11th April, 2018. It appears that the matter was posted for further cross of the defendant no.1 on 12th July, 2018, and as the petitioner nor his advocate were present, the cross-examination of the respondent no.1's witness was closed and 'no cross order' was passed. The petitioner filed an application (Exhibit – 114) and prayed for setting

aside the order of no cross which was allowed by the trial Court vide order dated 8th August, 2018, subject to paying costs of Rs.100/- to the defendant. Thereafter, the petitioner moved an adjournment application (Exhibit – 118) and sought an adjournment on the ground that they wanted to confront the witness with certain documents and as such sought time. The said application was rejected and again the trial Court passed an order of ‘no cross’ on the said application. Thereafter, the petitioner filed another application (Exhibit – 121) and prayed for recall of the order dated 31st October, 2018 and for permission to cross-examine the defendant no.1. It was also stated in the said application that they have now obtained the necessary documents for cross-examining the said witness. The learned Judge rejected the said application in view of the order passed below Exhibit – 118. Hence, this petition.

6. Learned Counsel for the Respondent Nos.1, 3 and 4. i.e. the contesting Respondents opposed the petition and submitted that no interference was warranted in the impugned orders, having regard to the conduct of the petitioner.

7. Learned Counsel for the petitioner assures this Court that the petitioner will not seek any adjournment and will proceed with the cross-

examination of the defendant no.1.

8. Having regard to the adjournment applications filed earlier by the petitioner, *prima facie*, no infirmity can be found in the orders dated 31st October, 2018 and 1st January, 2019. However, having regard to the assurance given by the learned counsel for the petitioner as stated aforesaid and by way of indulgence, the impugned order dated 31st October, 2018, by which the order of no cross was passed as well as the order dated 1st January, 2019, are quashed and set aside, subject to the petitioner paying costs of Rs.2,500/- to the Defendant no.1. The said costs to be deposited in the trial Court by 6th February, 2020.

9. Accordingly, the petitioner is permitted to cross-examine the defendant no.1, subject to payment of costs of Rs.2,500/-, on the next date. The petitioner shall not seek any adjournment for further cross-examination of defendant no.1.

10. Needless to state, that the petitioner is at liberty to confront the said witness with documents which are in his possession, subject to the objections raised by the defendants.

11. The Petition is allowed in the aforesaid terms and is accordingly disposed of. Rule is made absolute in the aforesaid terms.
12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.