

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3423 OF 2018

Nilesh Shankarrao Katkar

...Versus...

Arup S/o Nimai Haldar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri R.A. Gupte, Counsel for petitioner.
Shri K.S. Motwani, Counsel for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/02/2020

Heard Mr. Gupte, learned Counsel for the petitioner and Mr. Motwani, learned Counsel for the respondent. The present petition challenges the order dated 04/06/2018, passed below Exh.32, and application for setting aside the no-cross order passed on 25/09/2017, below Exh.12. In a suit for specific performance, filed by the plaintiff/respondent, the affidavit evidence was filed on 19/10/2015, and further chief was recorded on 14/03/2016, however, in absence of any cross-examination a no-cross order was passed. On 25/04/2016, the no-cross order was set aside, consequent to which an application under Order VI, Rule 17, as filed by the defendant/petitioner, came to be allowed. Thereafter, the matter was fixed for cross-examination on 25/09/2017, on which date since none appeared, the no-cross order was again passed. On an application Exh.32, filed by the

petitioner, for setting aside the no-cross order, the Trial Court by its order dated 04/06/2018 rejected the same. Mr. Motwani, learned Counsel for the respondent submits, that this indicates the delaying tactics on part of the defendant/petitioner. He therefore, submits, that the order has rightly been passed. Mr. Gupte, on the other hand submits, that an opportunity for cross-examination of the plaintiff is necessary, which would entail in bringing the truth on record. It is a trite position, that matters should always be decided on merits. Any inconvenience which may be caused to the plaintiff/ respondent, can always be compensated by cost.

In that light of the matter, in order to afford an opportunity for cross-examination, the impugned order is quashed and set aside, subject to the cost of Rs. 5000/- payable by the defendant to the plaintiff. The application at Exh.32 is accordingly, allowed. It is stated, that the matter before the Trial Court is now fixed on 02/03/2020, on which date, the plaintiff shall make himself available for cross-examination. The counsel for defendant shall conduct the cross- examination on that day itself, without seeking any further time. Writ Petition is allowed and disposed of accordingly. No order as to costs.

JUDGE