

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7245 OF 2020

Shrichand Santokram Ramchandani
and Another

..PETITIONERS

VERSUS

Rupesh Santokram Ramchandani and Others

..RESPONDENTS

....

Ms. H.M. Mangalni, Advocate for petitioners
Mr. A.D. Kasliwal, Advocate for respondent no.3

....

CORAM : R.G. AVACHAT, J.

DATED : 27th JANUARY, 2021

PER COURT :

1. The challenge in this writ petition is to order dated 18th February, 2020 passed by 5th Joint Civil Judge Senior Division, Aurangabad below application (Exh.107) in Special Suit No. 149 of 2011. By the impugned order, the application moved by the petitioners (original Defendant Nos. 2 and 5) for setting aside 'No Cross-Examination' order dated 20th January, 2020 came to be rejected.

2. Perused the impugned order. Learned Judge may appear to have been justified in rejecting the application (Exh.107). It was submitted by learned counsel for the petitioners that if 'No Cross-Examination' order is allowed to stand, the evidence given by Respondent No.3 (Defendant No.4)

would be read against the petitioners as it is. The same would prejudicially affect the interest of the petitioners in the suit.

3. Learned counsel for Respondent No.3 (Defendant No.4) would submit that in spite of there being ample opportunity, Respondent No.3 (Defendant No.4) was not cross examined on behalf of the petitioners. In the facts and circumstances of the case, the learned Judge was, therefore, justified in refusing to set aside 'No Cross-Examination' order.

4. In my view, the learned Judge could have allowed the application with imposition of some cost. The same would have served the purpose of justice. From the pleadings it appears that stand of the petitioners (Defendant Nos. 2 and 5) and that of Respondent No.3 (Defendant No.4) is not one and the same. If the evidence given by Respondent No.3 (Defendant No.4) is allowed to go without cross examination on behalf of the petitioners, same would be prejudicial to the interest of the petitioners.

5. In the interest of justice, therefore, writ petition is allowed. Order dated 18th February, 2020 passed below application (Exh.107) is set aside. Application (Exh.107) is allowed. The petitioners to deposit Rs.5,000/- (Rupees Five Thousand) in the trial Court as cost, to be paid to Respondent No.3 (Defendant No.4).

(R.G. AVACHAT, J.)

SSD