

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

WRIT PETITION NO. 8084 OF 2021

- 1] Kartik s/o Udhav Rahade,
Age : 21 years, Occu. Agriculture,
- 2] Udhav s/o Shahahdev Rahade
Age-50 years, Occ-Agriculture,
Both are R/o Kambi Village
Taluka & District Beed.

**..PETITIONERS
[Ori.Defendant Nos.9 & 10]**

VERSUS

- 1] Krishna s/o Rajendra Rahade,
Age-32 years, Occ-Agriculture,
- 2] Baliram s/o Rajendra Rahade
Age 29 years, Occ-Agriculture,
- 3] Nandabai w/o Rajendra Rahade,
Age 55 years, Occ-Agriculture,

All are R/o Kambi Village
Taluka & District-Beed.

**..RESPONDENTS
[Ori. Plaintiffs]**

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Mr. Sandesh R. Patil, Advocate for the petitioners
Mr. N.L.Jadhav, Advocate for Mr. Respondents

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**CORAM : MANGESH S. PATIL, J.
DATE : 03/09/2021**

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned

advocate for the respondents waives service. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioners are the defendant nos.9 and 10 in Regular Civil Suit No.56/2011 pending on the file of learned Civil Judge, Senior Division, Beed. They are impugning the order passed on their application (Exh.110) thereby refusing them opportunity to cross examine respondents' witness.

3] True it is that, as has been mentioned by the learned Civil Judge, the petitioners seem to be sleeping over their rights. They have failed to cross examine the witness though an opportunity was extended. However, simultaneously one cannot forget the fact that it is trite that as far as possible the matters should be allowed to be decided on merits rather than in default. Costs are considered to be the right panacea at every sore of the litigation. In my considered view there are no exceptional circumstances to refuse the petitioner opportunity to cross examine the witness albeit costs will have to be imposed.

4] The Writ Petition is allowed subject to petitioner's depositing costs of Rs.5000/- in the trial Court within 2 weeks. The respondents shall be entitled to claim the costs. The impugned order is quashed and set aside. The Rule is

made absolute.

5] The respondent plaintiff shall keep his witness present before the trial Court as per the date given by it and the petitioner shall cross examine him on the same day without seeking any adjournment.

[MANGESH S. PATIL, J.]

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