

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2036 OF 2021**

Ambalal Pukhraj Jain

... Petitioner

V/s.

Kiran Mangesh Korgaonkar & Ors.

... Respondents

Mr.B.R. Singh i/b. R.B. Singh & Associates for Petitioner.

Mr.Nitin Tungare for Respondent No.3.

CORAM : A.S. GADKARI, J.**DATE : 7th July 2021.****(Through Video Conferencing)****PC. :**

1. By the present Petition under Article 227 of the Constitution of India, the Petitioner/Original Plaintiff has impugned Order dated 23rd March 2021 passed below Exhibit-47 in RAE Suit No.369/717 of 2013, thereby rejecting his application for setting aside the Order of 'No cross of D.W.-1' dated 18/03/2021, passed by the Small Causes Court, Bandra Branch, Mumbai.

2. During the course of arguments, Mr.Nitin Tungare, learned counsel for the Respondent No.3, i.e. contesting Respondent, fairly submitted before this Court that, his client has no serious objection for setting aside the impugned Order, however the Petitioner/Original Plaintiff be directed to

conduct cross-examination of D.W.-1 without seeking adjournments. He submitted that, the Trial Court has now listed the said case for further proceedings on 12th July 2021.

3. Mr.Singh, learned counsel for the Petitioner, on instructions, submitted that, the Petitioner hereinafter will not seek any adjournment in the matter except on medical grounds and rather will co-operate in prosecuting the suit itself. The said statement is accepted.

4. If the Petitioner is not permitted to cross examine D.W.-1, it may affect his case and therefore in the interest of justice, it is necessary that the Petitioner may be permitted to cross-examine D.W.-1.

5. In view of the above, the impugned Orders dated 18th March 2021 and 23rd March 2021 passed by the Trial Court are quashed and set-aside, subject to condition that the Petitioner shall pay a cost of Rs.5,000/- (Rs.Five Thousand Only) to the High Court Legal Services Committee, Mumbai, within a period of two weeks from today.

The Petitioner to pay/deposit the cost in the account namely “High Court Legal Aid Fund”, Account No. 60045304283, IFSC-MAHB0000002 of the Bank of Maharashtra, Branch-Fort, Mumbai-400032, maintained by the High Court Legal Services Committee, Mumbai, Room No. 105, 1st Floor, PWD Building, High Court, Mumbai and to furnish the details of such cost to the High Court Legal Services Committee, Mumbai and obtain the

receipt thereof physically or through Email i.e. hclsc.mumbai@gmail.com which shall be the proof of such payment/deposit.

6. The Petitioner is permitted to cross-examine D.W.-1 without seeking any adjournment in the matter except for medical reasons.

7. It is made clear that, if the Petitioner fails to deposit the said amount of cost within stipulated period, the cross-examination conducted by the Petitioner of D.W.-1 will not be taken into consideration by the Trial Court at the time of final hearing of the Suit.

8. Petition is allowed in the aforesaid terms.

[A.S. GADKARI, J.]