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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2938 OF 2020**

Smt. Janabai Shivram Chothe, through PoA ...Petitioner
Suresh Shivram Chothe

Versus

Balgonda Shivagouda Patil & Ors. ...Respondents

Mr. Aditya Raktade, for the Petitioner.

CORAM: Smt. Bharati Dangre, J.

DATED: 21st December 2021

P.C.:-

1. Heard the Counsel for the Petitioner, who is impleaded as Defendant No. 18 in Regular Civil Suit No. 98 of 2002. He is aggrieved by an order dated 25.09.2018 passed by the learned Joint Civil Judge Junior Division, Gadhinglaj, by which his application filed vide Exhibit D-556 seeking permission to cross-examine the Plaintiffs, by setting aside the order of “No Cross” passed on 25.04.2017 is requested to be recalled.

2. On hearing the Counsel for the Petitioner and on perusal

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of the impugned order, I am satisfied that the Petitioner do not deserve any indulgence, particularly when the learned Judge has recorded that the cross-examination of the Plaintiffs on behalf of Defendant Nos. 1 to 6 was over on 17.01.2017 and though sufficient opportunity was afforded to Defendant Nos. 7 to 22 to cross-examine the Plaintiffs, the opportunity was not availed. Recording that even the application of Defendant Nos. 12 to 17 and 19 to 22 was rejected, the request of the Petitioner / Defendant No. 18 was also turned down.

3. My attention is invited to an order passed by this Court on 17.09.2019 on a writ petition filed by Defendant Nos. 7 to 9, 12 to 17, and 19 to 22 being aggrieved by the refusal to show any indulgence to permit them to cross-examine the Plaintiffs. This Court has showed his magnanimity and permitted the cross-examination subject to payment of Rs. 10,000/- by way of costs to the Plaintiffs.

4. I must make it clear that I am persuaded to pass this order only because of the indulgence shown by this Court in respect of the co-Defendants.

The impugned order is, therefore, set aside subject to the Petitioner paying cost of Rs. 10,000/- to be paid by the Petitioner to the Plaintiffs, along with Rs. 3,000/- already

deposited by the Petitioner in this Court to show his bona fides. The Petitioner is at liberty to withdraw the said amount of Rs. 3,000/- and make it over to the Plaintiffs. Upon the entire amount being transmitted to the Plaintiffs within a period of two weeks from today, the cross-examination of the Plaintiffs at the instance of the Defendant No. 18 shall be granted.

5. The learned Trial Court is directed to schedule the cross-examination of the Plaintiffs at the instance of this Petitioner in the week commencing from 17.01.2022 and shall conclude the same by 31.01.2022. If within this period, the Petitioner/ Defendant No. 18 is not able to cross-examine the Plaintiffs, it shall be taken that he has lost this opportunity to cross-examine.

The Writ Petition is allowed in the aforesaid terms.

(Smt. Bharati Dangre, J.)