

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

**WRIT PETITION NO.650 OF 2022
WITH WRIT PETITION NO.3383 OF 2022**

**SOMNATH BAPU ZENDEKAR (PANCHAL)
VERSUS
BABAN BAPU ZENDEKAR (PANCHAL) AND ANOTHER**

...

Advocate for Petitioners : Mr. Rahul P. Dhase
Advocate for Respondent No.1 : Mr. H. S. Bali
Advocate for Respondent No.2 : Mr. H. V. Tungar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21ST APRIL, 2022

PER COURT :

1. Both these petitions challenge the 'no cross' orders passed against the petitioners/original defendants in R.C.S. No.547/2012. The applications filed by the petitioners for setting aside 'no cross' orders are rejected by the trial Court on the ground that the petitioners have failed to pay the cost of Rs.300/- each, within stipulated time. In the said applications, the petitioners contended that since the compromise talks were going on between the petitioners and respondents, the petitioners did not deposit the cost within stipulated time. However, since the compromise could not be materialised, the petitioners may be permitted to deposit cost of Rs.300/-. The trial Court rejected the applications filed by the petitioners.

2. The R.C.S. No.547/2012 is filed for partition and separate possession of the suit property. The petitioners have interest in the immovable suit property. Reasonable and fair opportunity needs to be given to the petitioners to defend their case. Failure on the part of the petitioners to deposit the cost within stipulated time cannot be a ground to deny fair opportunity of hearing to the petitioners.

3. For the aforestated reasons, both the writ petitions are allowed. The 'no cross' orders passed by the trial Court against the petitioner are hereby quashed and set aside, on the condition that the petitioners shall pay cost of Rs.5,000/- each to the original plaintiff in the trial Court within a period of four weeks from today.

(NITIN B. SURYAWANSHI, J.)