

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

WRIT PETITION NO.2544 OF 2022

Rambhau Bhimrao Chaudhary,	]	
Age : 64 Years, Occu : Agril.	]	
R/o Garkheda No.1,	]	
Tq. and Dist. Aurangabad	]	... Petitioner. (Orig. Defendant)

Versus

Santosh Bapurao Chaudhary,	]	
Age : 43 Years, Occu : Agril.,	]	
R/o Garkheda No.1,	]	
Tq. & Dist. Aurangabad	]	... Respondent. (Orig. Plaintiff)

...

Advocate for Petitioner : Mr. P. S. Pawar.

Advocate for Respondent : Ms. Pallavi Wangikar h/f. Mr. R. V. Gore.

...

CORAM : MANGESH S. PATIL, J.

DATED : 17 JUNE 2022

ORDER :

1. Heard.
2. Rule. Rule is made returnable forthwith. With the consent of the parties, the matter is heard finally.
3. The petitioner is the defendant in the suit and is aggrieved by rejection of his request to lead evidence, by the order under challenge.

4. The learned Judge in the impugned order has elaborately referred to the history leading to passing of the order to point out as to how the petitioner has been remiss in defending the suit.

5. The learned advocate submits that the petitioner was a senior citizen and was suffering from illness. All these facts and circumstances were supported by the medical reports annexed to the petition. His valuable rights would be defeated for sheer technicalities. He is ready to participate at the trial punctually and by making him deposit some costs to compensate the respondent/plaintiff, the petition may be allowed.

6. Learned advocate Ms. Pallavi Wangikar for respondent submits that as has been observed by the learned Judge in the order, at every stage the petitioner has been protracting the trial. Twice costs were imposed which were also not deposited in time. Several adjournments were granted inspite of the above state of affairs and still to not avail. The petitioner is taking all the liberties and protracting the trial.

7. As far as the factual aspects referred to by the learned Judge in the order under challenge, there is no dispute, for those have not been controverted by the petitioner. It is apparent that inspite of having availed several opportunities and even suffering two orders imposing costs upon him, he has not availed of the opportunity to lead the evidence. Faced with this

situation, the learned Judge had found it convenient and proper in the interest of justice to reject his request.

8. However, simultaneously we need to borne in mind that it is always appropriate for the courts to decide the matters on merits. Noting absence of the petitioner at the hearing and preventing him from leading evidence would be a niggling defect.

9. Taking into account the conduct of the petitioner, it would be appropriate that by imposing heavy costs and pinning him down to the time schedule would meet the ends of justice.

10. Writ petition is partly allowed. The impugned order is quashed and set aside, however, subject to the petitioner depositing costs of Rs. 5,000/- in the trial court within one week.

11. On such costs being deposited, the trial court shall permit the petitioner to lead evidence on the due date which is stated to be 5 July 2022. He shall not seek any adjournments and shall conclude his evidence within a period of four weeks thereafter.

12. Rule is made absolute.

(MANGESH S. PATIL, J.)