

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

910 WRIT PETITION NO.8252 OF 2021

KHATOON BEE SHAIKH ISMAIL AND ANOTHER
VERSUS
MOHAMMED IRSHAD MOHAMMED ARSHAD

...

Advocate for Petitioners : Mr. Dalvi Uday D.
Advocate for Respondent : Mr. Tribhuwan Nitin T. and
Mr. Pagare Anand S.

...

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 11-03-2022

PER COURT :-

1. With the consent of the learned counsel for the parties taken up for final disposal.

2. By an order dated 18.06.2021 learned Civil Judge (Senior Division), Aurangabad has rejected an application filed by the petitioner – original defendant Nos. 1 and 2 for setting aside the ‘no cross’ order which was passed on 26.11. 2019.

3. The main contention raised by the petitioners in the application for setting aside the ‘no cross’ order is that the petitioner No.1 is a 72 years old handicapped *Pardanashin* lady who has been suffering from leprosy, blood pressure, diabetes and other complications related to the above ailments. The

second petitioner has to look after her health being her only son. The defendants, therefore, could not remain present in the Court on the dates prescribed. It is, inter alia, submitted before the lower Court that the Advocate engaged by them was duty bound to attend the Court but he did not. The petitioners were under the impression that their Advocate would attend the matter in the Court. It is further contended that on 23.03.2020 due to lock down in view of the Covid-19 Pandemic situation, they could not attend the Court. It was further contended that on 06.01.2021 when defendant No. 2 appeared in the Court, he realized that their Advocate had not been attending the matter.

4. It appears that it was principally due to the absence of the advocate in the Court the impugned order came to be passed for which the petitioners cannot be blamed. The valuable rights of the petitioners in immovable property cannot be jeopardized due to the inaction on the part of the Advocate engaged by them.

5. The learned Civil Judge, in the impugned order, returned a finding that the reasons cited are vague, without substantiating the same.

6. The learned counsel for the petitioner has drawn my attention to the Medical Certificate of petitioner No. 1 issued by

the Government Medical College and Hospital, Aurangabad. The certificate indicates that petitioner No. 1 is handicapped to the extent of 40 % and requires continuous treatment as well as regular follow up for every 15 days.

7. In view of the aforesaid facts, the impugned order needs to be set aside and it stands set aside for the aforesaid reasons. The parties are directed to appear before the Civil Judge Senior Division, Aurangabad on **21.03.2022**.

8. The learned Civil Judge (Senior Division), Aurangabad shall give an opportunity to the petitioners to cross examine the plaintiff / witnesses.

9. After the plaintiff's evidence the defendants shall step into the witness box and shall proceed further in accordance with law without seeking further adjournments. After recording the evidence of the parties the trial Court shall proceed to decide and dispose of the suit on its own merits in accordance with law.

10. The petition stands disposed of in aforesaid terms.

11. No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

shp/-