

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

WRIT PETITION NO.11397 OF 2017

Rajabhau S/o Narayan Aarbad & Others

... Petitioners
(Orig. Defendts. nos.2 to 5)

Versus

Sk. Jamiruddin S/o Sk. Ahmed & Another

... Respondents
(Res. No.1/Orig. Plaintiff
Res. No.2/Orig. Def. No.2)

...
Mr. Anand P. Bhandari, Advocate for Petitioners
Mr. D. M. Mane h/f Mr. Milind Patil, Advocate for Respondent No.1
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th August, 2022

PER COURT :-

1. Being aggrieved by the order passed by the learned Civil Judge, Junior Division, Pathri below Exhibit-48 in Regular Civil Suit No.31/2015, the petitioners are before this Court by filing present petition under Article 226 & 227 of the Constitution of India.
2. The respondent no.1 filed suit for declaration and possession of immovable properties and also for permanent injunction. The same is resisted by the petitioners/defendants. During the course of trial, when the suit was posted for cross-examination of plaintiff, application (Exhibit-48) is filed contending that the learned

Advocate representing the petitioners/defendants is engaged in death and cremation of his father in law and therefore, cross examination of the plaintiff cannot be taken, hence, short adjournment was sought for conducting cross-examination. By the order dated 27-04-2017, the said application is rejected by the Trial Court holding that the plaintiff is 75 years old and he comes from Hyderabad. The date was fixed as per request of the Advocate for the defendants. There are five other advocates who have signed the Vakalatnama, but none of them are ready to conduct the cross examination. Hence, the Trial Court rejected the said application.

3. Thereafter, the petitioners moved application (Exhibit-48) seeking setting aside of no cross order passed against them. By the impugned order, the said application is rejected holding that, the plaintiff is about 73 years old residing at Hyderabad. On 27-04-2017, the advocate for the defendants was present, but did not cross examine the witness. After rejecting Exhibit-48, no cross order was passed and since then already six dates are over but the defendants did not move any application and today the application is filed. There is nothing on record to show that defendant was ill on the last dates. Hence, the Trial Court was of the view that there is no satisfactory reason given by the defendants to allow the application. Hence, the application is rejected.

4. I have given due consideration to the rival submissions of the learned Advocate for the petitioners and learned Advocate for respondent no.1. I have perused grounds raised in the writ petition, documents and impugned orders. I am of the opinion that no cross order passed against the petitioners cannot be sustained.

5. Substantial rights of the parties in the immovable properties are involved in the present matter. Fair and reasonable opportunity to plead and substantiate their case needs to be given to the petitioners. By denying the right to cross examination, serious prejudice is caused to the petitioners. Right to cross examination is a valuable right which the party is entitled to exercise to prove his case. By the impugned order, the same is denied to the petitioners.

6. In the facts of the present case, as the plaintiff is 75 years old and is attending the proceeding from Hyderabad, he needs to be adequately compensated. Hence, the following order:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order 24-08-2017 passed by the learned Civil Judge, Junior Division, Pathari below Exhibit-48 in Regular Civil Suit No.31/2015, is hereby quashed and set aside.

(iii) Application (Exhibit-48) is allowed, subject to the petitioners paying cost of Rs.10,000/- to the respondent/plaintiff before the Trial Court.

(iii) In pursuance of the order passed by this Court, the petitioners have deposited an amount of Rs.6000/- in the Trial Court. The petitioners have deposited further amount of Rs.4000/- in the Trial Court.

7. Considering the old age of the plaintiff and the fact that the suit is pending since 2015, the trial is expedited. The parties shall co-operate in the expeditious disposal of the suit. The Trial Court is expected to decide the suit within a period of six months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]

Sameer