

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

WRIT PETITION NO.12825 OF 2021

**SURESH NANAPPA MENCHIREL
VERSUS
MOHD. ADIL KHAN MOHD. AKIL KHAN ALIAS AZHAR MAMU AND
ANOTHER**

...
Advocate for Petitioner : Mr. Ashutosh S. Kulkarni
Advocate for Respondents No.1 and 2 : Mr. J. M. Murkute
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th JUNE, 2022

PER COURT :

1. The petitioner is aggrieved by the order passed below Exhibit-136 in R.C.S. No.482/2011, by the learned 16th Joint Civil Judge, Junior Division, Aurangabad, thereby rejecting the application filed by the petitioner/plaintiff for setting aside 'no-cross' order dated 21-11-2019, passed below Exhibit-128.
2. Having heard the learned advocates for the respective parties and on going through the documents placed on record, it appears that 'no-cross' order is passed by the trial Court as the plaintiff failed to conduct further cross examination of defendants on the ground of death of close friend of the learned advocate for plaintiff.
3. The trial Court rejected the application holding that the

proceeding is nine years old and the trial is still pending, number of adjournments are sought on the various grounds by the plaintiff which were granted and the plaintiff is in a habit of seeking adjournment. More than sufficient opportunities are already given to the plaintiff and therefore, the trial Court thought it fit to reject the application filed by the petitioner/plaintiff.

4. No doubt it is a matter of record that the petitioner/plaintiff has sought several adjournments which were liberally granted by the trial Court, however, by the impugned order the right to cross examination of the plaintiff/petitioner is denied which will cause serious prejudice the plaintiff/petitioner. The right to cross examination is available to the party to prove his case and/or to bring sufficient material on record to substantiate his case. Fair and reasonable opportunity needs to be given to the parties to prove its case. In that view of the matter, this Court is of the considered view that the impugned order cannot be sustained. In the result, following order:

ORDER

I) Writ petition is allowed in terms of prayer clause 'A'.

II) The impugned order dated 21-11-2019 passed below Exhibit-128 and the order dated

29-02-2020 passed below Exhibit-136 in R.C.S. No.482/2011 are hereby quashed and set aside.

III) The applications at Exhibit-128 and Exhibit-136 are allowed subject to the payment of cost of Rs.5,000/- to be paid by the petitioner to the defendants in the trial Court.

IV) The trial Court is directed to conclude the trial within a period of six months from the date of receipt of writ of this order.

(NITIN B. SURYAWANSHI, J.)