

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 7321 OF 2022

Sahebrao Bhimrao Mote & Anr. ... Petitioners

V/s.

Chandrakant Rambhaji Mote ... Respondent

Mr. Umesh R. Mankapure for the Petitioners.

CORAM : ROHIT B. DEO, J.

DATE : 22nd JUNE 2022

P.C.

1. The petitioners are defendants 1 and 2 in Regular Civil Suit 57 of 2009 and are assailing the order dated 21.01.2022 whereby DW-1 is recalled for further cross examination.

2. The operative part of the order dated 21.01.2022 reads thus:-

1) Application is allowed subject to cost of Rs.500/- payable to defendant witness no.1

2) The defendant witness no.1 be recalled for cross examination.

3) Learned Advocate for the plaintiff is directed to conduct the cross examination of the witness on the same day on his appearance by paying cost of Rs.500/- without fail.

3. As is noted in the order impugned, the examination in chief of DW-1 was recorded on 15.10.2019. The plaintiff preferred an application seeking adjournment on the ground that since the mother of the counsel developed certain health issues, the counsel was forced to leave the Court to take his mother to the hospital. This application was rejected by the Trial Judge and the plaintiff was forced to conduct the cross examination of DW-1. According to the plaintiff, he is not well versed with law and since the Court was not inclined to adjourn the hearing, he was compelled to close the cross examination after asking two questions which do not do any justice to the cause of the plaintiff.

4. The plaintiff sought recall of DW-1 for cross examination which the learned Trial Judge has allowed in view of glaring facts of the case.

5. I am not inclined to accept the submission of the learned counsel of the petitioner that the learned Trial Judge has exercised his discretion arbitrarily. I am also not impressed by the submission that the attempt is to fill in the lacunae. The learned Trial Judge rightly invoked the discretionary power under Order 18 Rule 17.

6. The petition is dismissed.

(ROHIT B. DEO, J.)