

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

WRIT PETITION 8277 OF 2022

Gramsevak Pimplas (Smt.Shobha Patil) & Ors. ...Petitioners
vs.
Jayashree Jagannath Chaudhari & Anr. ...Respondents

Mr.Ashish Verma with Dhruv Gupta for Petitioners.
Mr.J.H. Oak for Respondents 1 and 2.

CORAM : ROHIT B. DEO, J.

DATED : 13 JULY 2022

P.C. :

The Petitioners are facing proceedings under Order 39 Rule 2A vide Civil Miscellaneous Application 59/2018.

2. The disobedience alleged is of the order dated 23.12.2016 in Regular Civil Suit 272/2011.

3. It appears that while the Petitioners did file their written statement in Civil Miscellaneous Application 59/2018, inadvertently the written statement was tagged with the record of the decided civil suit.

4. The court proceeded without written statement under the mistaken assumption that the written statement is not filed. It further appears that due to certain reasons, the Petitioners did not attend the proceedings and in the interregnum the plaintiff-applicant filed an affidavit in lieu of examination in chief. The Petitioners preferred application dated 28.3.2022 under the mistaken assumption and there is an order passed to

proceed without cross-examination. However, there was no order as such and the Petitioners were not really required to seek leave to cross-examine the deponent. That application came to be rejected by the trial court and as the situation stands today, the civil miscellaneous application is fixed for final argument.

5. The facts, as noted supra, make it clear that the order impugned is manifestly erroneous. In no view of the matter could the Petitioners – non-applicants have been prevented from cross-examining the plaintiff-applicant.

6. The order impugned is, therefore, set aside.

7. The written statement be admitted on record. The Petitioners shall be permitted to cross-examine the plaintiff. The learned trial court shall ensure that Civil Miscellaneous Application 59/2018 is finally disposed of within the next six months.

8. The petition is disposed of.

(ROHIT B. DEO, J.)