

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5103 OF 2022

Ashok Kumar @ Ashok s/o Krishnakumar Chourasiya
Vs.
Mrs. Nita Nitin Malkan and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. A. Markandeywar, Advocate for petitioner.

CORAM : AVINASH G. GHAROTE, J.
DATE : 25/08/2022

1. Heard Mr. Markandeywar, learned counsel for the petitioner.
2. The present petition challenges the order Exh.67 dated 8.6.2022 by which the application for setting aside the no-cross order below Exh.52 has been allowed.
3. Mr. Markandeywar, learned counsel for the petitioner submits, that the defendants are intentionally delaying the matter and therefore, the learned trial Court ought to have considered the situation before passing the impugned order and therefore, submits that the impugned order is liable to be quashed and set aside and the application be rejected.

4. It is a settled position of law, that a trial always has to be on merits and whenever possible reasonable opportunity has to be granted to the other side. Any prejudice on account of the delay can always be compensated in terms of money. The trial Court has already awarded costs of Rs.1,000/- for setting aside the no-cross order for permitting the defendants to cross-examine.

5. I see no reason to interfere in the impugned order as that is a proper and reasonable order considering the requirement of law to decide the suit on merits. Insofar as the question of procrastination is concerned, the defendants can be directed to complete the cross-examination within fixed time, considering which, the petition is dismissed. However, the defendants are expected to commence the cross-examination on 29.8.2022, the day fixed before the learned trial Court and complete it within a week therefrom.

JUDGE

Sarkate