

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.317 OF 2023

PANDHARI SATWAJI KUSHOD AND OTHERS
VERSUS
SAYANNA LINGANNA PORADWAR AND OTHERS

Mr. Upendra B. Bilolikar, Advocate for the Petitioners.
Mr. Vivek V. Bhavthankar, Advocate for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : MARCH 01, 2023.

PER COURT :

1. The petition takes exception to the order dated 22nd August, 2022, 16th November, 2022 and 25th November, 2022 passed by the trial Court in Regular Civil Application No.67 of 2015, whereby the petitioner's application for permission to deposit the amount of costs and subject to deposit of costs to cross-examine the respondent-plaintiff came to be rejected.

2. The affidavit of evidence of the respondent-plaintiff was filed on 7th October, 2019. On 18th September, 2021 as none appeared on behalf of the petitioners for cross-examination of the plaintiff "no cross" order came to be passed, which was set aside by order of 11th January, 2022 subject to payment of costs of Rs.500/-. Subsequently, on 19th July, 2022, part cross-examination was

recorded and subsequently on 22nd August, 2022, as again none was present on behalf of the petitioners the “no cross” order was passed. An application was filed for setting aside the order of 22nd August, 2022, which came to be allowed by order of 18th October, 2022 subject to cost of Rs.2500/-. Again the petitioners-defendants failed to pay the amount of costs and failed to cross-examine the witness. Pursuant to which the order came to be passed on 16th November, 2022, reviving the “no cross” order dated 22nd August, 2022.

3. Learned counsel for the petitioners submits that the petitioners be permitted to exercise their right of cross-examination subject to imposition of costs. He would further submit that the petitioners would conclude the cross-examination within a fixed time frame as may be set out by this Court.

4. Per contra, learned counsel appearing for the respondents submits that affidavit of evidence has been filed on 7th October, 2019 and time and again, the petitioners have failed to cross-examine the plaintiff, and the applications have been filed only to delay the proceedings.

5. Considered the submissions of the parties. A judicial note needs to be taken of the fact that since March, 2020, the country was reeling under the influence of Covid-19 pandemic and as such, the operation of the Court was restricted. By various

decisions of this Court and the Apex Court were passed directing the trial Courts not to pass any orders which will prejudice the parties for the reason of the absence of parties. However, it also needs to be noted that in spite of time being granted by the trial Court to complete the cross-examination and, time and again the Court has set aside “no cross” order and permitted the petitioners to cross-examine to witness subject to payment of cost and there has been non compliance on part of the petitioners.

6. In my opinion, it would serve the interest of justice, if the petitioners are permitted to cross-examine the plaintiff subject to the payment of costs of Rs.25,000/- to be paid to the respondent-plaintiff. This Court is informed that the matter is fixed tomorrow on 02.03.2023. The cross-examination of the plaintiff to commence tomorrow subject to the payment of Rs.25,000/- to be paid to the respondent-plaintiff tomorrow i.e. 02.03.2023.

7. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)