

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

WRIT PETITION NO. 2298 OF 2018

Hausabai Narayan Sonawane
Since died through her LRs
Ashok Narayan Sonawane and others .. Petitioners
Versus
Rajshekhar Digambar Kulkarni
and others .. Respondents

Shri Rahul O. Awasarmol, Advocate for the Petitioners.
Shri Vikram S. Palsikar, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 28TH FEBRUARY, 2023.

FINAL ORDER :

. Petition takes exception to the order dated 21st December, 2017 passed by the Trial Court in R.C.S. No. 111 of 2013 closing the petitioner's right to cross examine the respondents/defendants witness.

2. On 21st December, 2017 on behalf of the respondents the police head constable was examined. On the same day an application came to be filed on behalf of the petitioners that advocate was in personal difficulty and was unable to remain present to conduct the cross examination, which application came to be rejected as the witness was a police official. Subsequently, on 11.01.2018 an application for setting aside order of no cross passed on 21st December, 2017 was filed, which also came to be rejected on 22nd January, 2018 on the ground that

the record of investigation U/Sec. 156(3) of the Code of Criminal Procedure is filed and, therefore, no prejudice is going to be caused if application is rejected.

3. Heard learned counsel for the respective parties.

4. From the evidence which is on record of the police head constable, it appears that examination in chief of the police head constable was recorded and the witness was not summoned merely for the purpose of production of documents. In such case the petitioners are bound to cross examine the witness. Considering that the valuable right of the cross examination of the petitioners is closed by the order of the Trial Court, in my opinion, it is in the interest of justice that the impugned order is quashed and set aside subject to payment of cost of Rs. 5,000/- (Rs. Five thousands only) to be paid to the respondents.

5. The parties to appear before the Trial Court on 20th March, 2023 and necessary notice be issued to the witness. Learned counsel for the petitioners on instructions submit that on the date fixed for cross examination of the witness, the petitioners would ensure that the cross examination is conducted and completed. This statement made on instructions of the petitioners is accepted as an undertaking to this Court. Writ petition stands allowed in the above terms.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23