

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

WRIT PETITION NO. 4120 OF 2019

Jijabai Fakirrao Ambhore

.. Petitioner

Versus

Vimalbai Ratanlal Bora-Jain Through

GPA Santosh Ratanlal Bora and others .. Respondents

Shri Vikrant S. Palsikar, Advocate for the Petitioner.

Shri Gajendra D. Jain, Advocate for the Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 06TH FEBRUARY, 2023.

FINAL ORDER :

. Heard.

2. The petitioner is aggrieved by the order dated 29th November, 2018 passed in Spl. C. S. No. 119 of 2015, whereby the petitioner's application for setting aside no cross order and the evidence close order of the petitioner, who is original defendant No. 1 came to be rejected.

3. Learned counsel for the petitioner submits that there were two witnesses who were proposed to be examined on 16th December, 2017 and 23rd February, 2018. As the counsel was not available no cross order in respect of these witnesses came to be passed. He would further submit that by order of 26.06.2018, the evidence of the petitioner was closed. An application for setting aside the no cross order as against two witnesses and the

evidence close order was filed which came to be rejected.

4. Learned counsel for the respondent No. 1 vehemently opposes the petition and submits that the intention appears to be to prolong the trial. He would further submit that it is clear from the impugned order dated 29th November, 2018 that there were no valid excuses and explanations which were given by the junior counsel. It is apparent that intention was to delay the trial.

5. I have considered the submissions of the parties.

6. The explanation which has been tendered by the junior counsel for the non presence of the senior is on account of personal engagement and as such adjournment application came to be filed. The explanation which has been tendered is plausible one and in my opinion harsh view has been adopted by the Trial Court. Considering that the petitioner intends to examine the witness diligently and proceed with the matter, in my opinion interest of justice would be served if the impugned order dated 29th November, 2018 is quashed and set aside subject to payment of cost of Rs. 2,500/- (Rs. Two thousands Five hundred only) to be paid by the petitioner to the respondent No. 1/plaintiff within a period of two (02) weeks from today.

7. In the light of the above, the writ petition is allowed in above terms.

[SHARMILA U. DESHMUKH, J.]