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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2102 OF 2023

Laxman Pandit Patil

PETITIONER

VERSUS

Chindha Totaram patil and Others

RESPONDENTS

.....

Mr. Paresh B. Patil (Borse) Advocate for the petitioner

Mr. C. P. Patil, Advocate for respondent No.8

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th APRIL, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India impugns common order dated 12th January, 2023 passed by 3rd Joint Civil Judge, Junior Division, Chalisgaon below Exhibits-144 and 185 in Regular Civil Suit No. 81 of 2013.

2. The petitioner / original plaintiff has filed Regular Civil Suit No. 81 of 2013 for partition, declaration and permanent injunction. The suit is resisted by the respondents / defendants. The Trial Court framed issues and the parties stated leading evidence. After defendant No.8 filed his affidavit, in lieu of examination in chief, present petitioner failed to cross-examine

him, as his advocate was not present on that day. When the Trial Court asked the petitioner to cross-examine the witness, he refused. Hence, the Trial Court passed "No Cross" order. Thereafter, the petitioner requested the Trial Court to set aside the "No Cross" order, by filing application Exhibit-144, however, since no order was passed on the said application, the petitioner filed application Exhibit-185. By the common order, dated 12th January, 2023, the Trial Court rejected both the applications. Hence, the present writ petition.

3. Heard learned advocate for the petitioner and learned advocate for respondent No. 8 / defendant No. 8. Perused the writ petition memo, documents annexed with it and the impugned order.

4. While rejecting the said applications, the Trial Court has observed that Application Exhibit-144 was filed 9 months before. The petitioner has cross-examined defendants No.1 to 7. The petitioner has given different reasons in applications Exhibits-144 and 185.

5. The impugned order is passed in gross violation of the principles of natural justice. Reasonable and fair opportunity is denied to the petitioner to conduct cross-examination of

defendant No. 8. The Trial Court ought to have granted opportunity to the petitioner to cross-examine defendant No.8. By passing "No Cross" order against the petitioner, fair trial is denied to him. The impugned order is, therefore, unsustainable in law and facts of the present case. In the result, writ petition is allowed. Application Exhibit-185 is allowed, subject to, the petitioner paying costs of Rs.5000/- to defendant No.8 in the Trial Court, within a period of four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE