

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8495 OF 2023

Maroti Baburao Biradar
and another

.... Petitioners

Versus

Sau. Kalavai Ramrao Kaname
and others

.... Respondents

.....

Mr. V.H. Pathade, Advocate for the Petitioners
Mr. T.M. Venjane, Advocate for Respondent No.1
Mr. P.N. Kutti, AGP for Respondent Nos. 2 to 4

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th JULY, 2023

ORDER :

1. Order impugned in the present petition is passed below Exhibit-57 by the learned Civil Judge, Senior Division, Nilanga, in special Civil Suit No.2 of 2019, thereby rejecting the application filed by the petitioner for setting aside 'no cross' order.

2. Heard the learned advocate for the petitioners, learned advocate for respondent No.1 and the learned Assistant Government Pleader for respondent Nos.2 to 4. Perused the writ petition memo, annexures thereto, and the impugned order.

3. Admittedly, the petitioners/original defendants were given an opportunity to cross-examine the witness. On failure on the part of the petitioners/defendants to avail the said opportunity, 'no cross' order was passed against them on 05/02/2022. The said order was set aside by allowing Application Exhibit-54. In spite of that, the petitioners/defendants failed to conduct the cross-examination and 'no cross' order was restored on 21/10/2022. This 'no cross' order dated 21/10/2022 was set aside by order dated 24/11/2022, however, the petitioners/defendants failed to conduct the cross-examination. Hence, on 09/02/2023, 'no cross' order was passed.

4. By Application Exhibit-57, the said 'no cross' order was sought to be set aside on the ground that, on that day, the advocate for the petitioners/defendants was suffering from illness and weakness, hence could not attend the Court and conduct the cross-examination, the said reason did not appeal to the Trial Court, and hence, the application is rejected.

5. Though there are lapses on the part of the petitioners/defendants in conducting cross-examination of witness, considering the fact that their valuable rights in

immovable property are involved in the present case, in the interest of justice and with a view to give fair opportunity to the petitioner to contest the case on merits, the petitioners/defendants deserve one last chance to cross-examine the witness. In that view of the matter, the writ petition is allowed.

6. Impugned order dated 09/02/2023 passed by learned Civil Judge, Senior Division, Nilanga, below Exhibit-57 in Special Civil Suit No.2 of 2019 is hereby quashed and set aside.

7. Application Exhibit-57 is allowed subject to the petitioners paying costs of Rs.10,000/- to the respondent/plaintiff in the Trial Court.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane