



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

WRIT PETITION NO. 7449 OF 2022

Sayyad Nurani Begum Sayyed Musa
and another .. Petitioners

Versus

Shaikh Noorjahan Begum Shaikh
Sirajoddin and others .. Respondents

Shri Ganesh J. Kore, Advocate for the Petitioner.
Shri G. K. Naik Thigale, Advocate for the Respondent Nos. 1 to 6.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 30TH NOVEMBER, 2023.**

FINAL ORDER :

. The learned counsel for the petitioners seeks leave to amend the prayer clause. Leave to amend is granted. Amendment is to be carried out forthwith.

2. Heard learned counsel for both the sides finally.

3. An order dated 12.04.2022 passed below Exhibit 152 in Spl. C. S. No. 52 of 2012 is under challenge. Right to cross examine of the petitioners is forfeited by order dated 03.03.2022. The same is sought to be challenged by application Exhibit 152. An affidavit in examination in chief is filed at Exhibit 151. The learned counsel submits that impugned order is against the principles of natural justice. There are no *mala fides* or any

oblique motive in not conducting the cross examination. The learned Judge has adopted hyper technical approach.

4. The learned counsel for the respondents supports the impugned order. He would submit that the petitioners are not diligent. The respondent is suffering hardship due to the dilatory tactics of the petitioners. He prays to dismiss the petition.

5. It reveals that both the parties have filed suits against each other. Spl. C. S. No. 52 of 2012 is filed by the petitioner for declaration and for specific performance of contract. Whereas suit R.C.S. No. 139 of 2010 has been filed for injunction. Both the suits are being tried together. As the proceedings are at the evidence recording stage, it is desirable to extend an opportunity to the petitioners to conduct cross examination. The impugned order is hyper technical. It is unsustainable. However, the petitioners are liable to pay cost.

6. In view of the above, I pass following order.

O R D E R

A. The writ petition is allowed.

B. The impugned order dated 12.04.2022 passed by the learned Civil Judge Senior Division, Beed below Exhibit 152 in

Spl. C.S. No. 52 of 2012 is quashed and set aside and the application Exhibit 152 stands allowed.

C. The petitioners shall pay cost of Rs. 10,000/- (Rs. Ten thousands only) to the respondents directly within a period of three (03) weeks from today or deposit the same in the Trial Court, in that case the respondents are at liberty to withdraw the same.

D. The learned Trial Court shall make an endeavour to decide Spl. C. S. No. 52 of 2012 and R.C.S. No. 139 of 2010 as expeditiously as possible and preferably within a period of eight (08) months from today.

E. The petitioners shall co-operate for expeditious disposal of the suits.

[SHAILESH P. BRAHME, J.]

bsb/Nov. 23