

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

WRIT PETITION NO.12726 OF 2023

**MAHESH GANPAT NAVARKAR
VERSUS
TUSHAR BHATA SEVATKAR AND OTHERS**

...
Advocate for Petitioner : Mr. Ankush N. Nagargoje

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th OCTOBER, 2023

PER COURT :

1. Leave to correct prayer clause.
2. Petitioner is aggrieved by order dated 31/01/2023, passed by learned 4th Joint Civil Judge, Senior Division, Dhule, below Exhibit-72 in Special Civil Suit No.25/2015, thereby rejecting application filed by petitioner.
3. Suit is filed by petitioner/plaintiff for possession and permanent injunction. At the time of recording of evidence, petitioner/plaintiff filed application Exhibit-72, thereby objecting defendants' request to cross-examine hostile witness i.e. PW2 Pravin Agrawal. This application is rejected by trial Court. Hence, present petition.
4. Heard learned advocate for petitioner. Perused writ petition memo, annexures thereto and impugned order.

5. It appears from record that petitioner examined PW2 as his own witness. Since PW2 was not supporting case of petitioner/plaintiff, permission was sought by petitioner to cross-examine PW2, which was granted by trial Court. Accordingly, petitioner has cross-examined said witness. After cross-examination of PW2 by petitioner was over, advocate for defendants requested to cross-examine said witness. Said request was objected by petitioner by filing application Exhibit-72.

6. Learned advocate for petitioner assailed the impugned order contending that, once petitioner/plaintiff have cross-examined his own witness under Section 154 of Indian Evidence Act, defendants are not entitled to conduct cross-examination of that witness, in terms of Sections 137 and 138 of the Indian Evidence Act. Trial Court, therefore, has committed error in passing impugned order.

7. Argument of petitioner is misconceived and the same is devoid of merit. Since witness of petitioner PW2 has not supported case of petitioner, permission was sought by petitioner to cross-examine said witness, which was granted by trial Court. Merely because petitioner has cross-examined his own witness, he cannot claim that defendants are not entitled to cross-examine that witness. Defendants have every right to cross-examine witness of

petitioner/plaintiff.

8. Trial Court has rightly held that, merely because permission is granted to petitioner under Section 154 of Evidence Act to cross-examine his own witness, opportunity to defendants to cross-examine that witness in terms of Sections 137 and 138 of Indian Evidence Act, cannot be denied.

9. There is no illegality or perversity in order impugned in present petition. No jurisdictional error or error of law is committed by trial Court while passing impugned order. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)