

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

62 WRIT PETITION NO.10677 OF 2022

**DAMU GAIBI DEOKATE AND ANOTHER
VERSUS
SHRIKANT RAMAKANT KOKATE**

...
Advocate for Petitioners : Mr. Shaikh Shoyab Mohd Israil

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 01-02-2023

PER COURT :

. Heard.

2. Office noting shows that the respondent has been served. The learned counsel for the petitioners submits that the respondent has already been served by private notice. However, none appears for the respondent.

3. Considering that the suit is of the year 2012 and the limited issue arises as regards setting aside 'no cross order' which has been passed against the petitioner, the petition has been taken up for hearing forthwith.

4. It is the case of the petitioner - defendant that the affidavit of evidence was filed by the respondent – plaintiff on 27.07.2017 and on 14.11.2018 part cross-examination of the plaintiff

was conducted and thereafter the matter was adjourned for further cross-examination. On 28.09.2018 the petitioner filed an application for adjournment which was rejected and 'no cross' order came to be passed. Subsequently by order dated 04.12.2021 'no cross' order was set aside on payment of cost of Rs.500/-. Respondent moved an application for recasting of the issues which came to be allowed on 03.02.2022 and the issues were recast and matter was adjourned to 19.07.2022, on which date again an application was moved by the petitioner for adjournment which came to be rejected. On 04.08.2022 on the adjourned date as the petitioner failed to conduct the cross-examination, 'no cross' order came to be passed. By an application dated 05.09.2022 the petitioner once again sought setting aside 'no cross' order, which came to be rejected by the trial Court by order dated 20.09.2022.

5. It cannot be disputed that the conduct of the petitioner - defendant is to be deprecated inasmuch as, in spite of having suffered a previous order of 'no cross', the petitioner over and again sought adjournments as a result of which suit of year 2012 is being prolonged.

6. In spite of the above position, considering the fact that in

the intervening period the country was suffering from pandemic, the period of two years ought to be considered and the application which has been filed on 05.09.2022 has to be allowed. In my view, if the application is allowed by imposing cost on the petitioner - defendant, the interest of justice would be served.

7. This Court is informed that R.C.S. No.436 of 2012 is fixed on 04.02.2023 on which date the petitioner will commence the cross-examination of the respondent – plaintiff.

8. In view of the above, the following order is passed.

ORDER

(i) The impugned order dated 20.09.2022 is quashed and set aside subject to payment of cost of Rs.10,000/- to be paid to the respondent - plaintiff within a period of two weeks from today.

(ii) Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)