

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

**WRIT PETITION NO. 12586 OF 2022**

VIJAY BHAGWANTRAO DOIPHODE  
VERSUS  
DILIP BHAGWANTRAO DOIPHODE AND OTHERS

...

Mr. P.N. Kalani – Advocate for Petitioner

Mr. S.V. Deshmukh – Advocate for Respondent Nos.1 to 6

....

**CORAM : SHARMILA U. DESHMUKH, J.**

**DATED : 24<sup>th</sup> JANUARY, 2023**

**PER COURT:-**

1. Heard.

2. By this petition the petitioner is challenging the order dated 1<sup>st</sup> September, 2022 passed in Regular Civil Suit No. 27 of 2018 below Exh.62, whereby the petitioner's application for setting aside "no cross" order came to be rejected.

3. In Regular Civil Suit No. 27 of 2018 the evidence of the respondent/plaintiff was recorded on 27<sup>th</sup> November, 2021 and as on that date the witness was not cross-examined by the petitioner, an order of "no cross" came to be passed, which was sought to be set aside by the petitioner by moving an application dated 4<sup>th</sup> May, 2022. The application dated 4<sup>th</sup> May, 2022 came to be allowed by the Trial Court on 29<sup>th</sup> July, 2022 and on the same day again order of "no cross" came to be passed as the witness was not cross-examined. Against which, the application was moved once again for setting aside no cross order, which came to be rejected.

4. The Trial Court after setting aside the order of no cross on 29<sup>th</sup> July, 2022, on the very day passed order of "no cross" as the witness was

not cross examined by the petitioner. It is to be noted that, when the application for setting aside order of “no cross” was heard on 29<sup>th</sup> July, 2022 and order dated 29<sup>th</sup> July, 2022 was passed. The counsel for petitioner was not present as the counsel is from Parbhani whereas the trial has been conducted at Hingoli. In my view, after setting aside “no cross” order on 29<sup>th</sup> July, 2022, it was expected that the date be fixed for cross-examination in the matter. In such circumstances, the order dated 29<sup>th</sup> July, 2022 passed by the Trial Court thereby setting aside the no cross order has virtually become ineffective due to absence of the advocate or the petitioner himself.

5. However, in the interest of justice, the impugned order dated 1<sup>st</sup> September, 2022 is required to be quashed and set aside subject to payment of Rs. 5,000/- to be paid to the respondents.

6. This Court is informed that, the matter is now fixed before the Trial Court on 13<sup>th</sup> February, 2023 on which date the petitioner would proceed to cross-examine the witness. On that day, if petitioner fails to cross-examine the witness no further leniency will be shown to the petitioner.

7. Writ Petition is accordingly disposed of.

**(SHARMILA U. DESHMUKH)**  
**JUDGE**

*Pooja K.*