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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12942 OF 2022

Rajendra Ramrao Kumdale

PETITIONER

VERSUS

Kusum Ramrao Kumdale @
Kusum Nagnath Lohare

RESPONDENT

.....
Mr. Kailas B.Jadhav, Advocate for the petitioner
Mr. A. V. Sakolkar, Advocate for the respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th MARCH, 2023

ORDER :

1. The petitioner has questioned legality and propriety of the order dated 17th October, 2022 passed by learned Joint Civil Judge, Senior Division, Latur below Exhibit-50 in Special Civil Suit No. 105 of 2019, thereby rejecting the application filed by the defendant – petitioner for setting aside “no cross” order.
2. Record reveals that the plaintiff and the defendant are real sister and brother. There was an attempt for amicable settlement. The defendant was under impression that settlement would take place in future. The plaintiff had given power of attorney to her son. On 23rd August, 2022, affidavits in lieu of in

chief of the plaintiff's witnesses No.2 and 3 were filed and thereafter on 6th September, 2022 affidavits in lieu of in chief of witnesses No.4 and 5 were filed. On 25th August, 2021, no cross examination order was passed in respect of witness No.1. This order was set aside on 26th April, 2022 and costs of Rs.1,500/- was imposed on the defendant. On 23rd August, 2022, "no cross-examination" order in respect of plaintiff's witnesses No.2 and 3 was passed and on 6th September, 2022, "no cross-examination" order in respect of plaintiff's witnesses no.3 and 4 was passed. By application Exhibit-50, the defendant prayed for setting aside no cross-examination order of the plaintiff's witnesses. Said application is rejected by the Trial Court, hence the present writ petition.

3. Heard learned advocate for the petitioner – original defendant and the learned advocate for the respondent – original plaintiff. Perused the grounds raised in the petition, documents placed on record and the impugned order.

4. Lapses on the part of the defendant in not prosecuting application Exhibit-50 and not cross-examining plaintiff's witnesses is apparent from the record. The Trial Court, in the impugned order, has observed that the defendant and his advocate were absent when application Exhibit-50 was called for

hearing. Already, though cost was imposed while setting aside “no cross-examination” order, cost is not deposited by the defendant and, therefore, the Trial Court has drawn an inference that the defendant is prolonging the matter, since 2021.

5. Be that as it may, by not setting aside the “no cross-examination” order, the Trial Court has deprived the defendant from contesting the suit on merits and has denied him fair opportunity to defend and put up his case. The impugned order, therefore, is unsustainable in law and facts.

6. In the result, following order-

ORDER

- I. Writ petition is allowed.
- II. Impugned order dated 17th October, 2022 passed by learned Joint Civil Judge, Senior Division, Latur below Exhibit-50 in Special Civil Suit No. 105 of 2019 is hereby quashed and set aside subject to payment of costs of Rs.20,000/-
- III. Respondent – plaintiff is at liberty to withdraw the amount of Rs.20,000/- deposited by the petitioner – defendant in this Court .

- IV. Cross-examination of the plaintiff's witnesses shall commence on a particular date and as far as possible the same shall be conducted on day to day basis.
- V. Defendant shall not seek unnecessary adjournments and shall co-operate in expeditious disposal of the suit.

[NITIN B. SURYAWANSHI]
JUDGE