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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4964 OF 2022

Smt. Sujata Kishor Kadam and Ors. ... Petitioners

vs.

Madhukar Vasudev Laad and Ors. ... Respondents

Mr. L. R. Odhekar for the Petitioners.

CORAM : SANDEEP V. MARNE, J.

DATED : 24 JANUARY, 2023

P.C. :-

1. This petition is filed challenging order dated 5 February 2020 passed by Civil Judge (S.D.) Khed, Ratnagiri on application at Exhibit-156. That application was filed by defendant no. 2 for recalling plaintiff for further cross examination.

2. The evidence of the plaintiff has been completed on 11 August 2014 when a common advocate engaged by both defendants cross examined the plaintiff. Thereafter the evidence of the defendants commenced. Evidence of defendant no. 1 is complete on 25 September 2015. The affidavit of evidence of defendant no. 2 is also filed. Six years after the

evidence of the plaintiff was over, the defendant no. 2 moved an application dated 5 February 2020 for recalling plaintiff for further cross examination. The trial court has proceeded to allow the application by impugned order dated 5 February 2020. The petitioner challenges the order dated 5 February 2020 in the present petition.

3. Notices in the present petition were issued on 22 April 2022. In addition to court notice service by private notice was also permitted. The bailiffs report indicates that respondent nos. 1 and 2 are duly served. The petitioners Advocate has filed affidavit of service on 9 June 2022 showing that both respondents are served. However none appears on behalf of the respondents.

4. Considering the narrow controversy involved in the present petition and since respondents are already served, but have chosen not to appear before the court, I proceed to decide the issue involved in the present petition.

5. As observed above evidence of the plaintiff was completed on 11 August 2014. Both the defendants have engaged common Advocate Mr. Y. V. Athavale who conducted

detailed cross examination of the plaintiff on 10 March 2014 and 11 August 2014. Perusal of the cross examination of the plaintiff indicates that question relating to defendant no. 2 were also put across to the witness. The last suggestion given by the common Advocate engaged by defendant nos. 1 and 2 is about possession of the property being with defendant no. 2. Therefore it cannot be stated that the questions relating to the stand of defendant no. 2 were not asked by the common Advocate as sought to be alleged in the application dated 5 February 2020.

6. Considering the fact that the detailed cross examination of the plaintiff is already conducted on 11 August 2014 coupled with the fact that the application for recalling plaintiff was filed six years thereafter on 5 February 2020, I am of the view that the trial court ought not to have allowed the application in a casual manner by observing that no prejudice would be caused to the plaintiff. The application was premised on an assertion that questions relating to defendant no. 2 were not asked by the common Advocate engaged by defendant nos. 1 and 2. In the light of this assertion, it was necessary for the trial court to go through the cross examination and verify

whether the assertion was correct. Without undertaking that exercise, the trial court has proceeded to allow the application by recording a solitary finding that no prejudice would be caused to the plaintiff if the application is allowed. The approach of the trial court does not commend this court.

7. Consequently writ petition succeeds. Order dated 5 February 2020 passed by the Civil Judge Senior Division, Khed, on application below Exhibit 156 is set aside.

8. Writ Petition is allowed in the above terms.

(SANDEEP V. MARNE, J.)