

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 247 OF 2023

Balwant Raghunath Ghorpade

.. Petitioner

Versus

Baban Yadu Ghorpade & Ors.

.. Respondent

- Ms. Darshana Kambli i/by Mr. P.B. Gujar for Petitioner

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 10, 2023

P.C.:

1. Heard Ms. Kambli, learned Advocate for Petitioner. Perused the record of the case.

2. By filing the present Petition, Petitioner has prayed for the following reliefs:-

- “(b) By an order of this Hon’ble Court, the order dated 29.11.2022 passed by Civil Judge, Satara in Regular Civil Suit No. 218 of 2015 be kindly quashed and set aside and further the Application dated 03.01.2022 filed below Exh. 86 be kindly allowed;*
- (c) That by an order of this Hon’ble Court, the Judgment & Order dated 03.01.2022 passed below Exh. In R.C.S. No. 218 of 2015 be kindly stayed.”*

3. Petitioner is Defendant No. 1 in R.C.S. No. 218 of 2015. On 29.11.2021, the learned Trial Court passed an order of ‘No cross-examination’. The said order is at page No. 49 of the Writ Petition. Defendant No. 1 filed Application below Exh. 86 dated 03.01.2022 giving reasons for his absence and sought setting aside of the above

order. On the same date itself, the learned Trial Court has rejected the Application by stating that this was not the first attempt to set aside the 'No cross' and in the past also, such orders were passed and were set aside by the Court allowing cross-examination of the witness. Learned Trial Court has stated that in the past Defendant was also put to cost which he has not paid. In view thereof, the learned Trial Court opined that there is clear defiance of the order of the Court and in that view of the matter, the Application dated 03.01.2022 came to be rejected by the impugned order of even date.

4. At the outset Ms. Kambli, learned Advocate for Petitioner submitted that costs as directed earlier have been paid and there is no defiance of the order. That Defendant No.1 would be extremely careful in future and he should be given one final opportunity. She submitted that Defendant No. 1 be put to any terms as deemed fit so that his defence may not be shut out before the Trial Court.

5. In view of the submissions made by the learned Advocate for Petitioner, I am inclined to allow the present Petition subject to conditions.

6. In view of the above, following order is passed:-

- (i) The impugned orders dated 29.11.2021 and 03.01.2022 are quashed and set aside;

- (ii) Defendant No. 1 shall appear before the learned Trial Court on 16.01.2023 at 12:00 noon and shall present himself for cross-examination either on that date or any date thereafter as fixed by the learned Trial Court;
- (iii) Learned Trial Court is requested to and is at liberty to fix the cross-examination according to its convenience and preferably on a day to day basis till the cross-examination of Defendant No. 1 is completed;
- (iv) Petitioner i.e. Defendant No. 1 shall pay costs of Rs. 5,000/- to the Kirtikar Law Library, High Court, Mumbai which shall be a condition precedent for setting aside the impugned orders. Cost shall be paid by 14.01.2023 and receipt of the same shall be produced on record of this Petition.

7. With above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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