



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 1443 OF 2019**

Gajanan Gyansing Pawar

Aged about 57 years, Occ. Retired,

R/o Warwat Bakal, Tq. Sangrampur,

Dist. Buldhana

...Petitioner

// VERSUS //

Manikrao Gyansing Pawar,

Aged 62 years, Occ. Police Patil,

R/o Warwat Bakal, Tq. Sangrampur,

Dist. Buldhana

... Respondent

Shri A.V.Bhide, Advocate for the petitioner.

Shri V.G.Bhamburkar, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 12th SEPTEMBER, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the order below exhibit 44 dated 21st December, 2018, passed by the learned Civil Judge, Junior Division, Sangrampur in Regular Civil Suit No. 15 of 2017, rejecting the application for setting aside the 'No-cross' order.

3. There is no dispute that the examination-in-chief of the plaintiff was over on 7th July, 2018 and when the matter was fixed on 23rd November, 2018, as the learned counsel for the petitioner was out of station an application was moved for adjournment and it was rejected with no costs.

4. Thereafter, immediately on 1st December, 2018 the application was moved for setting aside the no cross order which came to be rejected vide impugned order dated 21st December, 2018.

5. Thus, considering the dates of events and the fact that the application for setting aside no cross order was filed immediately, the learned trial Court ought to have considered it in light of the fact that, if no cross examination is allowed, the petitioner would suffer great hardship and prejudice.

6. In the circumstances, I am of the opinion that the petition needs to be allowed by setting aside the impugned order subject to the payment of costs to the respondent and on a condition that the petitioner shall cross-examine the plaintiff within one month from next fixed date. Accordingly, I pass the following order.

i. Writ petition is allowed.

ii. The order below exhibit 44 dated 21st December, 2018 passed by the learned Civil Judge, Junior Division, Sangrampur in Regular Civil Suit No. 15 of 2017 is hereby quashed and set aside, on a condition that the petitioner shall pay costs of Rs.5,000/- to the respondent within two weeks from today.

iii. Further the petitioner shall cross-examine the plaintiff within one month from next fixed date, provided that the plaintiff is available for cross-examination.

[ANIL S. KILOR, J.]