



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3775 OF 2023

(Azaharkhan s/o Muzaffar Khan @ Pappukhan Vs. Sajedasultana wd/o Mohd. Idris)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. V. B. Bhise, Advocate for Petitioner.
None for Respondent.

CORAM: ANIL S KILOR, J.

DATE: 19th AUGUST, 2023.

The order dated 18.03.2023 passed below Exh.87 by Civil Judge, Senior Division, Nagpur rejecting the application for setting aside closer of the evidence of the plaintiff and for granting permission to adduce evidence of Nisarkha Yunuskha is under challenge in this petition.

2. After going through the order it is evident that the reason recorded by the learned trial court is that the learned counsel for the plaintiff was not ready to conduct the cross-examination of the defendant.

3. I am unable to understand when the application for permission to adduce evidence by setting aside closing evidence of plaintiff was moved, while considering the said application how the fact that the counsel for the plaintiff was not ready to conduct the cross-examination of the defendant, is relevant and can be the reasons for rejection of such application.

4. As far as filing of such application at belated stage is concerned, the Court could have imposed costs on the plaintiff for such reasons. But refusal to adduce evidence would cause great prejudice to the plaintiff.

5. In the circumstances, I am of the opinion that the writ petition needs to be allowed by setting aside the order impugned, subject to payment of costs. Accordingly, I pass the following order:

- i] The writ petition is allowed.
- ii] The order dated 18.03.2023, passed below Exh.87, by Civil Judge, Senior Division, Nagpur is hereby quashed and set aside. The application Exh.87 is allowed subject to payment of costs of Rs.15,000/- to be paid to the defendant within two weeks from today.
- iii] The petitioner undertakes to lead the evidence and examine the witness and conclude his evidence within two months from today.

(ANIL S. KILOR, J)