

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4345 OF 2018

1. Dadaji S/o Donu Mandale,
Aged about 62 years, Occ.
Agriculturist,
2. Bhaiyyaji S/o Dewaji Mandale,
Aged about 52 years, Occ.
Agriculturist,

Both R/o Navegaon, Post Mudza,
Tahsil & Dist. Gadchiroli

3. Usha W/o Naktu Chaudhari,
Aged about 47 Years, Occ. Household,
R/o Mademul, Tahsil & Dist.
Gadchiroli
4. Lalita W/o Khushal Gurnule,
Aged about 95 years, Occ. Household,
R/o Akapur (Kadholi), Tahsil Saoli,
Dist. Chandrapur

...Petitioners

// VERSUS //

1. Rajesh S/o Ramdas Mandale,
Aged about 52 years, Occ. Cultivation
R/o Navegaon, Tahsil & Dist.
Gadchiroli
2. Sau. Manish Moreshwar Sonule,
Aged about 50 years, Occ. Household,
R/o Mul, Tahsil-Mul, Dist.
Chandrapur
3. Sau. Nilima Rajesh Wadhai,
Aged about 47 years, Occ. Household,
R/o Ward No.8, Mul, Tahsil-Mul, Dist.
Chandrapur

4. Rakesh S/o Ramdas Mandale,
Aged about 45 years, Occ. Cultivation,
R/o Navegaon, Tahsil & Dist.
Gadchiroli

... Respondents

Shri Rohit Joshi, Advocate for the petitioner.

Shri S.G.Karmarkar, Advocate for the respondent nos. 1 to 4.

CORAM : ANIL S. KILOR, J.

DATED : 23rd JANUARY, 2023.

ORAL JUDGMENT :

In this writ petition, the challenge is raised to the order below Exh.98 dated 23rd April, 2018 passed by the Joint Civil Judge (Junior Division) Gadchiroli, rejecting the application for setting aside no cross order dated 4th January, 2018 passed against defendants.

2. Shri Joshi, learned counsel for the petitioners points out that on 6th August, 2013, the issues were framed. Thereafter, on 17th October, 2017, the affidavit in chief was filed. On 21st February, 2017, the documents were filed and on 17th April, 2017, the chief examination was recorded and the matter was posted for cross-examination on 7th June, 2017.

3. It is further pointed out that on some occasions the matter was adjourned at the instance of the petitioner and on some occasions it was adjourned at the instance of respondent. Thereafter, the matter was listed on 4th January, 2018 and though the learned counsel for the petitioner was in the Court as he received the telephonic call about the ill-health of his father, he immediately left the Court and was not present

when the matter was called out and the order of no cross-examination was passed. It is further pointed out that immediately thereafter application (Exhibit 98) was moved for setting aside no cross order. However, the same was rejected by the impugned order on the ground that no medical documents as regards ailment of father of petitioner was filed on record. It is submitted that petitioner is ready to give undertaking that he will co-operate the trial Court to conclude the trial at the earliest.

4. On the other hand, Shri Karmarkar, learned counsel for the respondents supports the impugned order.

5. I have perused the documents filed along with the petition and the impugned order.

6. There is no dispute that since 17th April, 2017 the matter was fixed for cross-examination and thereafter it was adjourned either at the instance of the petitioner or respondent.

7. The application Exh.98 was moved on 15th February, 2018 pointing out that because of ill-health of the father of the learned counsel for the petitioner, he was required to leave the Court and therefore he was not available to cross-examine the witness.

8. Considering the reasons recorded by the learned trial Court that no document supporting the reason of ill-health is filed, is erroneous as no objection raised by the respondent in respect of ill-health of father of the learned counsel for the petitioner.

9. Further, as I have recorded that the matter was being adjourned after 17th April, 2014 at the instance of both the parties and therefore, it cannot be said that petitioner was not diligent.

10. In the circumstances, I am of the opinion that the impugned order dated 23rd April, 2018 needs to be quashed and set aside and the application Exhibit-98 needs to be allowed. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. Order below Exh.98 dated 23rd April, 2018 passed by the Joint Civil Judge (Junior Division) Gadchiroli is hereby quashed and set aside and thereby application Exh.98 is allowed;
- iii. Both the parties shall appear before the trial Court on 16th February, 2023 and shall co-operate the trial Court to conclude the trial at the earliest.
- iv. Learned trial Court is directed to expedite the trial and decide it expeditiously.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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by
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Date: 2023.02.01
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