

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

**WRIT PETITION NO. 5753 OF 2022**

1. Shri Madan Bapuraoji Kumare,  
Aged about 58 years, Occ. Business
2. Shri Mahadevrao @ Madhavrao  
Vitthalrao Phalke (Dead) through his  
legal representatives Shri Digambar S/o  
Mahadevrao @ Madhavrao Phalke  
Aged about 49 years, Occ. Service,  
Both R/o Ram Mandir Ward, Tah.  
Warora, Dist. Chandrapur

...Petitioners

**// VERSUS //**

1. Shri Dilip Kisan Moware,  
Aged about 64 years, Occ. Business
2. Smt. Tanebai Kisan Moware,  
Aged about 63 years, Occ. Business  
No.1 and 2 R/o Borda, Tah. Warora,  
Dist. Chandrapur.
3. Smt. Nanda Suresh Lande @ Nanda  
Kisan Moware, Aged about 52 years,  
Occ. Business, R/o Navin Vasti, Datala,  
Tah. & Distt. Chandrapur
4. Smt. Kunda Gopinath Gokhare @  
Gokhale, Aged about 57 years, Occ.  
Business  
R/o Near House of Shri Ramesh  
Vidhate, Dhanoli, Post Pirali, Tah.  
Bhandravati, Dist. Chandrapur
5. Smt. Manda Waman Kurekar,  
Aged about 64 years, Occupation –  
Business, R/o Jamgaon Khurd, Tah.  
Warora, Dist. Chandrapur.

... Respondents

Shri H.N.Bhongde, Advocate for the petitioners.  
Shri S.N.Singh, Advocate for the respondent no.1.

**CORAM : ANIL S. KILOR, J.**

**DATED : 24<sup>th</sup> APRIL, 2023.**

**ORAL JUDGMENT :**

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

2. In this writ petition, the order below exhibit 162 dated 22<sup>nd</sup> June, 2022 passed by the Civil Judge, Senior Division, Warora in Special Civil Suit No. 32 of 2010, rejecting the application for permission to cross-examine the defendant, is under challenge.

3. The application was rejected because of the conduct of the plaintiff. The learned trial Court has observed that the petitioner is intentionally prolonging the matter on one or other pretext.

4. Learned counsel for the petitioner, on instructions, made a statement that his client is ready to co-operate the trial Court in all manner to decide the suit within one month. He has also pointed out that the costs of Rs.50,000/- as directed by this Court vide order dated 22<sup>nd</sup> September, 2022, has already been deposited in this Court.

5. Learned counsel for the petitioner submits that he has no intention to prolong the matter. However, because of advocate appearing on behalf of the petitioner the matter was delayed and cross-examination

was not conducted, therefore, he submits that, for the mistake of a lawyer, the client should not suffer.

6. On the other hand, learned counsel for the respondent submits that because of the pendency of the suit, the defendant could not able to sell the property and for that reason the plaintiff wants to prolong the matter. It is submitted that the learned trial Court has rightly rejected the application by observing the conduct of the petitioner.

7. In the light of rival contentions of the parties, I have perused the record and the impugned order.

8. Considering the reasons given by the learned trial Court for rejecting the application, I do not find any infirmity committed by the learned trial Court in recording the reasons about the delay. However, for the mistake of the lawyer, litigant should not suffer. Moreover, now the petitioner has given an undertaking to co-operate the trial Court to decide the matter within one month.

9. Thus, considering the above referred facts, I am of the opinion that the petitioner should get one opportunity to pursue his remedy. Accordingly, I pass the following order.

i. The writ petition is allowed.

ii. Order below exhibit 162 dated 22<sup>nd</sup> June, 2022 passed by the learned Civil Judge, Senior Division, Warora in Special Civil Suit No. 32

of 2010 is hereby quashed and set aside, subject to cost of Rs. 50,000/-. The amount of Rs.50,000/- already deposited in this Court by the petitioners, be adjusted as costs and the same be transferred to the High Court Legal Aid Committee, Nagpur.

- iii. The petitioner be permitted to cross-examine the defendant.
- iv. The trial Court is directed to expedite the suit and it be decided in any case on or before **31<sup>st</sup> July, 2023**.
- v. Both the parties have undertaken to co-operate the learned trial Court to decide within stipulated period.

[ANIL S. KILOR, J.]

SACHINDANAND  
K NAIR

Digitally signed  
by  
SACHINDANAND  
K NAIR  
Date: 2023.05.02  
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