

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11464 OF 2023

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Khalil Nurmahanmad Mulla

... Petitioner

V/s.

Mohhiddin Nurmahanmad Mulla

... Respondent

Mr. Kuldeep U. Nikam for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 14, 2024

P.C.:

1. The petitioner original defendant in a suit for specific performance is challenging order of the Trial Court rejecting application for setting aside no cross-examination order passed below Exhibit-26 and Exhibit-32.

2. The respondent original plaintiff filed a suit for specific performance for execution of sale deed in terms of agreement to sell dated 2 March 2009, which according to the plaintiff, was executed subject to payment of Rs.34,900/-.

3. The petitioner contested the suit by filing written statement. The Trial Court framed necessary issues. The plaintiff filed affidavit in lieu of examination-in-chief on 27 February 2018. The defendant failed to cross-examine the plaintiff till 23 November 2021. Therefore, the Trial Court passed an order of no cross-

examination against the petitioner. On 2 May 2023, the plaintiff examined second witness, however, the defendant failed to cross-examine the second witness also. Therefore, the Trial Court passed an order below Exhibit-32 on 2 May 2023 recording no cross-examination against the plaintiff. Both orders below Exhibit-26 and Exhibit-32 are subject matter of present writ petition.

4. This Court, on 3 November 2023, issued notice for final disposal. Office remark dated 16 January 2024 indicates that sole respondent is duly served. Despite service, none appears for the respondent.

5. On perusal of the record, it appears that the suit is for relief of specific performance, which is a discretionary relief. The respondent's claim is contested by the petitioner by filing written statement which led the Trial Court to frame necessary issues.

6. On perusal of the record, it appears that the suit was fixed for settlement before the Lok Adalat on 22 April 2018. Thereafter, the suit was adjourned due to the said reason. Thereafter, from March 2020 till November 2021, the proceedings of all the Courts were affected due to Covid pandemic. It also appears that the petitioner received notice of the Lok Adalat on 15 February 2022.

7. Considering the aforesaid facts, the petitioner has made out a case for permission to cross-examine the witnesses of the plaintiff. However, said permission shall be subject to payment of costs.

8. Moreover, while opposing the application for cross-examination the plaintiff prayed for costs of Rs.10,000/-. Hence,

the petitioner shall pay costs of Rs.10,000/- to the plaintiff (respondent) within four weeks from today.

9. Payment of costs shall be condition precedent before petitioner is allowed to cross-examine both the witnesses of the plaintiff. Subject to payment of costs, rule is made absolute in terms of prayer clause (a).

(AMIT BORKAR, J.)