

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.288 OF 2024

Suresh Govind Shivalkar

.. Petitioner

Versus

Jitendra Mahadev Whankade

.. Respondent

-
- Mr. M. A. Khan a/w. Ms. Dipti Mehta, Advocates for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2024

P.C.:

1. Heard Mr. Khan, learned Advocate for Petitioner.
2. This Writ Petition takes exception to the order dated 16.10.2023 passed in Application filed below Exhibit-150 in Special Civil Suit No.21 of 2014.
3. Application was filed below Exhibit-150 by the Defendant to recall Plaintiff's witnesses namely Plaintiff himself being PW-1 and two other production witnesses from the office of District Collector who were examined by the Plaintiff in the year 2016.
4. After examination-in-chief of Plaintiff's witnesses was over, it is seen that when the trial was fixed for the Defendant and his Advocate to cross-examine the witnesses, the Defendant nor his Advocate remained present resultantly leading to passing of the order dated 21.11.2015 by the Trial Court recording that:-

“Plaintiff witness present when called out defendant and his advocate absent hence no cross”.

5. Hence Plaintiff took objection to the Application filed below Exhibit-150 and contended that without the aforementioned order of ‘no cross’ having been set aside the Application filed below Exhibit-150 was not maintainable nor tenable.

6. Leaving aside the merits of the Application filed below Exhibit-150, the aforementioned order of ‘no cross’ still subsists. It is seen that without any Application having been made to set aside the ‘no cross’ order before the learned Trial Court, no further substantive and consequential directions could have been passed.

7. It is seen that without any application been made, the ‘no cross’ order is set aside by the impugned order.

8. Hence issue notice to the Respondent. Petitioner is directed to serve the Respondent. Humdast permitted. In addition to Court’s notice, Petitioner is permitted to serve copy of Petition and today’s order within a period of two weeks from today on the Respondent and inform him about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondent is directed to file Affidavit-in-Reply to the Petition within a period of two weeks on receipt of copy of Petition and today’s order.

9. In view of the above observations and *prima facie* findings the suit proceedings before the learned Trial Court shall stand deferred in the meanwhile. This Petition shall be disposed of finally at the admission stage itself.

10. Needless to state that the impugned order dated 16.10.2023 shall also stand stayed in the meanwhile.

11. Stand over to 13th February, 2024.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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