

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

Writ Petition No.16923 of 2024

M/s. Lithos Estate Developers Pvt. Ltd. ... Petitioner
V/s.
Rajkumar Meghraj Shorewala ... Respondents.

Mr. Vijay Upadhyay	Advocate for the Petitioner
Mr. Satyavan N. Vasihnav a/w. Ms. Nupur J. Mukherjee, Mr. Rabhul Raut i/b. M/s. N.N. Vaishnawa & Co.	Advocate for Respondent

CORAM : S.M. MODAK, J

DATE : 27 November 2024.

P.C.

Heard learned Advocate for the petitioner-defendant and learned Advocate for the respondent-plaintiff.

2. There is a specific performance suit of the year 2004. Plaintiff has filed affidavit of examination-in-chief in 2015. There are Roznamas from Page No.71 to Page No.112. Learned Advocate for the petitioner has invited my attention to the facts recorded therein. For sometime the Court was vacant. Sometime the plaintiff was not present and on many occasions, the cross was not conducted on behalf of the defendants. Though defendant has cross-examined the plaintiff on certain occasions, for some reason or other, the cross was not complete. The Roznama also shows that learned Judge has closed

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the cross-examination and even granted a fresh opportunity to defendant. The defendant has utilised that opportunity and conducted the cross-examination partially but it was not complete for some reason or other. It is true that there was Covid situation for two years but still the duration from the time the affidavit was filed and until the time the cross-examination was lastly closed on 26 July 2022, is a long period and defendant was supposed to complete the cross-examination. On this background, the defendant filed Notice of Motion for setting aside no-cross order and learned trial Judge as per the impugned order passed on 27 July 2023 was pleased to dismiss that Notice of Motion. Even the learned Judge in Para No.8 has referred about various dates on which cross-examination was conducted.

3. The learned Advocate for the Petitioner humbly submitted that last chance be granted for cross-examination atleast for one date and the cross-examination only remains about the documents referred by the plaintiff. This contention is disputed for the reason already there is cross-examination. The learned Advocate for the respondents relied upon the observations in following judgments:-

(i) Shiv Cotex v/s. Trigun Auto Plast Private Limited and others¹,

(ii) Rasiklal Manikchand Dhariwal and another vs. M.S.S. Food Products²

1 (2011) 9 Supreme Court Cases 678

2 (2012) 2 Supreme Court Cases 196

In Paragraph No.16 of Shiv Cotex case the Hon'ble Supreme Court has incorporated one justifiable cause. In that matter plaintiff could not adduce evidence and that is why the suit was dismissed. It was reversed by the appellate Court and finally when it reached to Hon'ble Supreme Court it was set aside for the reason that more than sufficient opportunity was granted to the plaintiff.

4. This is a case wherein the defendant has exhausted the opportunity of cross-examination. It is not that they were denied the opportunity.

5. Even after setting aside the no-cross order when opportunity was given it was not exhausted to full extent. It cannot be said that there is a denial of an opportunity to contest the suit. The conduct of the defendant is such as to deny him the right of further cross-examination.

6. I am not inclined to interfere in the impugned order. Writ Petition is dismissed.

(S.M. MODAK, J.)