

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

WRIT PETITION NO. 17193 OF 2024

Manoj Anand Sonesar	]	
Age – 32 years, Occu. - Business	]	
R/o. Flat No.8, Sonesar Apartment,	]	
Sadhu Vaswani Road, Thane	]	
Ulhasnagar 421 003	]	... Petitioner

Versus

1.	Bulchand Nihalcchand Sonesar	]	
	Age – 68 years, Occu. - Business	]	
2.	Meena Bulchand Sonesar	]	
	Age – 65 years, Occu. - Business	]	
	Both R/o. Ramraj Bungalow,	]	
	Shashtri Chowk, Section 17,	]	
	Ulhasnagar 421 003, Dist. Thane.	]	... Respondents

Mr. Ram Ugrah Singh a/w. Mr. Ankur Jain and Mr. Santosh Shukla i/b. Mr. Hariom Mishra :-	Advocates for Petitioner.
Mr. Girish Paryani for A & G Legal Associates LLP :-	Advocate for Respondents No.1 and 2.

CORAM : S. M. MODAK, J.

DATE : 18th DECEMBER 2024

ORAL ORDER :-

1. Heard learned Advocate for petitioner/ defendant and learned Advocate for respondents/ plaintiffs. The Special Civil Suit No.297 of 2012 is fixed for recording of evidence. The affidavit is filed by plaintiff- Bulchand who is 70 years old. The turn of defendant has come firstly on 29th April 2024 and thereafter they did not cross examine plaintiff. Only few questions were put. Copy of compilation is produced on behalf of respondents. Lastly the Court has closed cross-examination as per the order dated 21st October 2024 (page No.41).

The order reads thus :-

“It is seen that Ld. Advocate for defendant mentioned that he will come at 01:00 p.m.. Court waited till 01:15 p.m. However he is absent. Hence no cross-examination. Re-examination – Nil.”

2. This order is challenged on behalf of petitioner/ defendant. His learned Advocate earnestly requested to grant one more opportunity and if it is granted, the cross-examination will definitely be completed.

3. Learned Advocate for respondents emphasized on the conduct of the petitioner in delaying the cross-examination purposefully. The

reason is plaintiff – Bulchand is sick and according to him on instructions he is in Intensive Care Unit. Whereas according to learned Advocate even the petitioner is suffering from cancer and he is unable to speak. Today the Suit is for cross-examination of plaintiff. This can be done through the learned Advocate for petitioner.

4. It is true everyone has got right to cross-examine. Copies of Roznama are produced by learned Advocate for petitioner. The documents filed by both of them indicates that cross-examination was not completed on earlier dates. The learned Judge was right in closing the cross-examination. However, in the interest of natural justice it is necessary to set aside the order but subject to imposition of costs. The Hon'ble Supreme Court has observed no costs should be nominal but it should be realistic. In addition to that the learned trial Judge must be reminded of his powers to regulate the conduct of dilatory litigants. It can be by passing periodical orders when there is an occasion. Closing of cross-examination is a drastic order. Hence I pass following order :-

ORDER

- (i) The order dated 4th November 2024 passed by 2nd Jt. Civil Judge S. D. Kalyan in Special Civil Suit No. 297 of 2012 is set aside.

- (ii) The petitioner is permitted to conduct cross-examination of the plaintiff - Bulchand on the date fixed by the trial Court subject to payment of costs of Rs.25,000/- (Rupees Twenty Five Thousand).
- (iii) The costs be directly be transferred to plaintiff's bank account. The plaintiff to give all the details of bank account by way of pursis before the trial Court.
- (iv) The trial Court is at liberty to pass order by using all the powers permissible by law including the power imposing costs which should be realistic and not nominal and depending upon the situation which may even go up to Rs.50,000/- (Rupees Fifty Thousand).

5. Writ Petition is disposed of.

[S. M. MODAK, J.]