

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17879 OF 2024

Vishal Prakash Sakhare

... Petitioner

vs.

Tukaram Kondiba Matere & Ors.

... Respondents

Mr. Nikhil Wadikar :-	Advocate for Petitioner.
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CORAM : S. M. MODAK, J.

DATE : 11th DECEMBER 2024

P. C. :-

1. Heard learned Advocate Mr. Wadikar for petitioner/ defendant No.6. The Suit is at the stage of recording of evidence. The plaintiff has entered into witness box (Exhibit No.57) whereas there are two more witnesses (Exhibits No.70 and 74). There are other defendants also. Though there is turn of defendant No.6 for cross-examination of these three persons, defendant No.6 has failed. The trial Court has show indulgence in allowing cross-examination by imposing costs of Rs.2000/- (Rupee Two Thousand) for every application. These orders are dated 8th September 2024 (pages No.54, 56 and 58).

2. Reasonable time was granted for depositing costs. On this occasion also defendant No.6 has failed. That is how the Court has vacated the order permitting cross-examination. This is as per order dated 23rd January 2024 (page No.60). The defendant No.6 applied for setting aside the said order. It is rejected by the trial Court as per order dated 29th June 2024 (page No.64). The learned Judge has recorded conduct of the defendant No.6. The Court has recorded defendant No.6 was negligent. This order is challenged by way of this Writ Petition.

3. It is submitted that due to inadvertance the costs could not be paid. It is submitted that defendant No.6 has no intention to prolong the hearing of the Suit because there is an injunction running against him. In fact when the Court already permitted defendant No.6 to cross-examine three witnesses subject to condition, if the condition is not complied with, closing the right of cross-examination is very drastic order. If at the beginning itself Court has not permitted cross-examination, the question could have been different. Now, learned Advocate for petitioner has shown readiness to deposit costs so also cross-examine three witnesses. This Court feels by putting stricter

conditions the petition can be allowed. No purpose would be served by keeping this petition pending after issuing the notice. The right of the plaintiff/ respondent can otherwise also is protected. Hence the order:

ORDER

- (i) Order dated 29th June 2024 dismissing the application for setting aside the order dated 23rd January 2024 passed by the Court of 6th Addl. Judge Small Causes Court and Jt. Civil Judge S.D., Pune is set aside.
- (ii) The defendant No.6 is permitted to cross-examine plaintiff and two witnesses subject to following conditions :
 - (a) The petitioner is directed to deposit costs of Rs.5,000/- (Rupees Five Thousand) per witness in all Rs.15,000/- (Rupees Fifteen Thousand).
 - (b) The amount be paid to the plaintiff.
 - (c) The defendant No.6 is permitted to cross-examine three witnesses within time limit as fixed by the trial Court.
 - (d) The trial Court to pass the necessary orders if the defendant No.6 is indulge into similar acts of delaying the matter including power to impose costs at least Rs.25,000/- (Rupees Twenty Five Thousand).

4. Writ Petition is disposed of.

[S. M. MODAK, J.]