



3534-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3534 OF 2023

(Nargis Bano w/o Matiulla & Ors. Vs. Sk. Farooq s/o Sk. Gaffar Qureshi)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.N. Ali, Counsel for the petitioners.
Shri A.S. Manohar, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
JULY 2, 2024

The challenge is to order dated 24/3/2023
passed by the Joint Civil Judge Senior Division, Buldhana,
in Special Civil Suit No. 2/2018.

2] Perusal of order indicates that the
petitioners – original defendant nos. 1 to 8 have filed
application for setting aside no cross order dated
20/1/2020 passed below Exh. 65 as also order dated
15/6/2022 passed below Exh. 1.

3] I have gone through order dated 15/6/2022
passed below Exh. 1, which reads thus :

*“Today present suit is fixed for cross
examination of witness no.1 for the plaintiff. All
defendants and their counsel are absent since
morning. The application Exh.96 filed by
defendant nos. 1 to 8 is rejected. Defendant
no.9 and his counsel are absent. The record
shows that on 15.02.2022 no cross order is
passed against defendant no.1. Thereafter, vide
order passed below Exh.93 the order dated
15.02.2022 is set aside and directed defendant
no.2 to pay Rs.500/- towards costs. Therefore,
on next date application for adjournment filed
by defendant no.9 Exh.94 is rejected with cost
of Rs.500/-. The record shows that the amount*

of both costs are not paid as order till today by defendant no.9. Thus, it is clear that is not also not interested to conduct the case. The present case is unnecessarily pending without effective hearing. The defendant no.9 did not fulfill conditions to setting aside no cross order, therefore, the order is still intact. Hence, plaintiff is directed to proceed further for conducting his case.”

4] As could be seen, there is no effective order passed against the petitioners. What has been said by the learned Judge is that the petitioners’ application, filed below Exh. 96, has been already rejected. Rest of the order pertains to defendant no.9 and the Court proceeded to pass no cross order against him as well. In that sense, even if order dated 15/6/2022, passed below Exh. 1, is set aside, order passed below Exh. 96 will stand as it is. By the said order, which is of even date, viz., 15/6/2022, the petitioners’ request to set aside order of no cross-examination dated 20/1/2020, has been rejected.

5] In addition to above, it appears that the petitioners had filed application below Exh. 100 making similar request, viz., to recall order dated 15/6/2022 passed below Exh. 1. This application has been not pressed by the petitioners and accordingly the application came to be filed.

6] Thus, firstly, the subsequent application could not have been filed and even if the said application is to be entertained, it relates to order passed below Exh. 1, which is in respect of defendant no.9 and not the petitioners. There is, thus, no substance in the application

filed by the petitioners to recall order dated 15/6/2022 passed below Exh. 1.

7] So far as order dated 20/1/2020 is concerned, no explanation whatsoever is given as to why couldn't the petitioners file application immediately after 20/1/2020. The petitioners have come-up with a case of COVID-19 pandemic. However, the lock down was imposed on or about 23/3/2020. In that sense, there are no reasons assigned by the petitioners for not approaching the trial Court to recall order dated 20/1/2020 until end of March – 2020.

8] Put all together, there is absolutely no substance in the petition. The same is accordingly dismissed subject to costs of Rs.10,000/-, which the petitioners have deposited in terms of order dated 19/6/2023 passed by this Court.

(ANIL L. PANSARE, J.)

Sumit