

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5620 OF 2025

Ashok Ramnath Zawar

VERSUS

Raibhan Yadav Devkar And Others

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Advocate for the Petitioner : Mr. Dodya Shrigopal G.

Advocate for Respondent No.1 : Mr. Deshpande Siddharth Ramesh

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JUNE 27, 2025

PER COURT :-

1. The petition takes exception to order dated 27.03.2025 passed by learned Civil Judge, Senior Division, Aurangabad in Regular Civil Suit No.649 of 2015 below Exhibit-123, whereby the prayer to recall plaintiffs witnesses and to grant permission to cross-examine by setting aside no cross order have been rejected. Similarly, by amending prayer clause (B), petitioner seeks to quash and set aside order dated 16.04.2019 and 27.08.2021 passed below Exhibit-50 and 105.

2. Mr. Dodya, learned advocate appearing for petitioner submits that petitioner is defendant no.3 in R.C.S. No.649 of 2015. Mr. Dodya invites attention of this Court to order dated 11.02.2025 passed in Writ Petition No.9445 of 2022. The said writ petition was filed by original defendant nos.1 and 2. This Court allowed the said writ petition and permitted defendant nos.1 and 2 to cross-examine

plaintiffs and PW-2, subject to payment of cost of Rs.25,000/- payable to plaintiffs. Mr. Dodya submits that in view of aforesaid order, defendant no.3 had made an application below Exhibit-123 before the Trial Court and requested to recall plaintiffs and their witnesses and permit him to cross-examine them by setting aside no cross order. However, said application is rejected by Trial Court observing that order passed in Writ Petition No.9445 of 2022 was confined to original defendant nos.1 and 2 only and defendant no.3 had not filed writ petitions for similar relief. Therefore, he cannot be permitted to cross-examine witnesses recalled. In that view of matter, Mr. Dodya submits that petition may be allowed and defendant no.3 may be permitted to cross-examine.

3. Per contra, Mr. Deshpande, learned advocate appearing for respondent took this Court through roznama of suit and previous orders. He points out that in the year 2014 itself the suit was expedited by this Courts orders and it was expected to be decided within six months. He points out lethargic approach of defendant no.3 at various stages of suit and obstacles created by him in smooth prosecution of suit. He would therefore urge that no indulgence be done by this Court in exercise of writ jurisdiction under Article 227 of Constitution of India.

4. Having considered submissions advanced, it can be observed that the suit is still at the stage of evidence of plaintiffs. By

order dated 11.02.2025 passed in Writ Petition No.9445 of 2022, this Court permitted defendant nos.1 and 2 to cross-examine plaintiffs and their witnesses. It is true that defendant no.3 has not raised challenge to no cross order nor had he filed writ petition. The order passed in Writ Petition No.9445 of 2022 was confined to defendant nos.1 and 2. Therefore, learned Trial Court was justified in rejecting petitioners application below Exhibit-123.

5. However, now by amending present petition, the petitioner has raised challenge to no cross order and sought permission to cross-examine witnesses. Looking to fact that suit is still at the stage of evidence of plaintiffs and defendant nos.1 and 2 are already permitted by this Court to cross-examine plaintiffs and their witnesses, it would be in the fitness of things, if petitioner/defendant no.3 is granted similar relief. However, looking to the conduct of petitioner and fact that the suit is being prolonged due to such conduct of defendant, plaintiffs needs to be adequately compensated by granting cost. In this background, following order is passed :

ORDER

- (i) Impugned orders dated 27.03.2025, 16.04.2019 and 27.08.2021 are quashed and set aside.
- (ii) The petitioner is permitted to cross-examine plaintiffs and their witnesses, subject to payment of cost of Rs.50,000/- to plaintiffs

(4)

within a period of two weeks from today. If cost is not paid within stipulated time, petition shall stand dismissed and this order be nonest.

(iii) In case cost is deposited, the Trial Court shall recall plaintiffs and their witnesses and petitioner/defendant no.3 be permitted initiate cross-examination on the same day and conclude it expeditiously.

(iv) The Trial Court shall endeavour to expeditiously decide the suit taking note of orders passed in Writ Petition No.9445 of 2022.

(v) Writ Petition stands disposed of in aforesaid terms.

(S.G. CHAPALGAONKAR, J.)