

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9251 OF 2015

Rajendra Shankar Sonawane And Another

VERSUS

Akiluddin Khaliluddin Peerjade And Others

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Advocate for the Petitioners : Mr. Bhandari Anand P

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JULY 09, 2025

PER COURT :-

1. Heard Mr. Bhandari, learned advocate appearing for petitioners.

2. Although notice of this petition is served twice, none appears for respondents. The order dated 22.08.2022 shows that notice was issued for final disposal and same is also served.

3. Mr Bhandari submits that respondent nos.1 and 2 instituted Regular Civil Suit No.185 of 2010 before learned Civil Judge, Junior Division at Jalgaon seeking relief of permanent injunction. On 07.02.2013, respondent no.1 filed affidavit of examination in chief. On 16.04.2014, petitioners sought adjournment for the purpose of cross-examination of respondent no.1. However, said application was rejected by order dated 16.04.2014 and right to cross-examination was forfeited. On 13.08.2014, petitioners filed an application below Exhibit-44 with prayer to set aside no cross order. The Trial Court allowed said application. In pursuance to said order,

the cross-examination of witnesses was conducted. In midst of cross-examination, certain documents were produced and matter was adjourned for filing reply on application for production of document. Ultimately, on 17.06.2015, no cross order is passed against the petitioners. On 09.07.2015, petitioners filed an application below Exhibit-45 praying for setting aside no cross order. However, same has been rejected. Mr. Bhandari would submit that default on part of petitioners was not intentional and if valuable right of examination is forfeited, serious prejudice would be caused to petitioners. It appears that proceeding in suit is stayed by order of this Court since 14.09.2015. While issuing notice itself, this Court put condition to petitioner to deposit a sum of Rs.2500/- to show his bonafide. Accordingly, petitioners have deposited said amount.

4. In the aforesaid facts, when matter is still at the stage of evidence, it would be in the fitness of things to allow petitioners to cross-examine plaintiffs witness, subject to payment of cost of Rs.2500/- as deposited in this Court.

5. In result, writ petition is allowed in terms of prayer clause (C). The amount of Rs.2500/- deposited in this Court be transmitted to the Court of learned Civil Judge, Junior Division at Jalgaon and same be disbursed in favour of plaintiffs.

6. The defendants are put to condition that they shall not seek adjournment for cross-examination of plaintiffs witnesses once they are recalled.

7. Writ Petition stands disposed of.

(S.G. CHAPALGAONKAR, J.)