



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO. 10152 OF 2025

DATTATRAYA ALIAS DATTU NIVRUTTI GHAYAL
VERSUS
SIMINTABAI VISHWANATH KAMBLE AND ANOTHER

...
Advocate for the Petitioner : Mr. Bhise Sachin S.

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 20, 2025

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. By way of present writ petition, the petitioner/defendant challenges impugned order dated 2.5.2024 passed below Exh. 65 by the learned Civil Judge, Junior Division, Chakur, in R.C.S.No. 114/2015. The learned trial court has rejected the Application filed by the defendant for setting aside evidence closed order dated 8.11.2023.
3. Suit is filed for partition and possession by the plaintiff/respondent. It is observed by the Trial Court in the impugned order that sufficient opportunity is given to the defendant to lead the evidence. In para 4, the learned Trial Court has observed that on 25.7.2019 evidence close order against the defendant was set aside on payment of cost of Rs.500/-. After passing order below Exh. 41, defendant No. 1 filed affidavit of examination in chief vide Exh. 45 on 5.7.2019. Plaintiff conducted cross examination of defendant on 25.9.2019. Roznama shows that defendant filed two applications for adjournment vide Exh. 51 and 52. Defendant No. 1 did not file adjournment application on 9.12.2020, 25.1.2021, 15.2.2021. Thereafter he filed adjournment applicant on 20.8.2021. Thereafter, matter

was listed on 22.9.2021, but defendant did not file adjournment application. On 6.4.2022 and 7.4.2022 he did not file adjournment application. Again on 15.2.2023, 1.4.2023, 25.4.2023, 19.6.2023 defendant did not file adjournment application. On 24.7.2024 the defendant filed adjournment application vide Exh. 62 and it was allowed on payment of cost of Rs.500/-. On 4.9.2024 he did not adduce evidence and did not pay cost. On 12.10.2023 defendant filed adjournment application vide Exh. 63.

4. On perusal of the impugned order, it appears that the trial Court has granted more than sufficient opportunity to the defendant to lead evidence. The defendant has filed affidavit of examination in chief, however, he did not remain available for further cross examination.

5. The defendant has filed application for setting aside the evidence closed order dated 8.11.2023 on 2.5.2024 i.e. after 6 months on the ground of illness of his wife and further submitted that his wife sustained fracture injury to her right hand. The said application is not supported by any medical document to show that wife of the defendant sustained fracture injury. As such, the trial Court has refused to set aside the order of closing of evidence of defendant.

6. Considering the above, it appears that the trial court has given sufficient opportunity to the defendant to lead evidence, however, the defendant did not lead his evidence. I see no error in the order passed by the trial Court. Hence, the writ petition is dismissed.

(ARUN R. PEDNEKER, J.)