



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8684 OF 2024

Bharat Govindrao Mule

....Petitioner

VERSUS

Surendra Manoharrao Shahane

.....Respondent

Mr. P. N. Kalani, Advocate for the Petitioner.

Mr. S. A. Deshpande, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed below Exhibit 37 in Special Civil Suit No. 53/2022 whereby the request made by the Defendant for setting aside 'no cross' order as well as permission to lead evidence came to be rejected.

3. Respondent/plaintiff filed suit for specific performance of contract. The suit came to be opposed by the Petitioner/defendant by filing written statement. After framing of the issues, Plaintiff led evidence. Since the learned counsel for Defendant was absent for

conducting cross-examination, the order came to be passed on 11.10.2023 of 'no cross' against the Defendant. Subsequently, the suit was proceeded for evidence of the Defendant and as the Defendant has failed to lead evidence, evidence of Defendant was closed on 05.01.2024. Application Exhibit 37 came to be filed for setting aside both orders and granting opportunity of hearing to the Defendant. Since the application is dismissed, present Petition.

4. Learned counsel for Petitioner submits that owing to the reason of absence of learned counsel for Defendant on account of hospitalisation of his mother, he could not cause appearance before the Trial Court which has resulted into passing of the order of no cross so also closing of the evidence of Defendant. It is his submission that having regard to the nature of the suit, he be given opportunity of cross-examining the Plaintiff so also leading his own evidence.

5. Learned counsel for Respondent opposed the said contention by drawing attention of the Court to the fact that the order of no cross was passed on 11.10.2023 whereas the application was moved on 02.03.2024 for setting aside the same. It is his

submission that considering the conduct of the Defendant, he is not entitled for any relief.

6. The suit is of the year 2022. Defendant caused appearance before the Trial Court and filed written statement. This indicates that the Defendant was inclined to oppose the suit. Insofar as absence of counsel for Defendant on 11.10.2023 is concerned, the same is explained with the document placed on record indicating hospitalisation of mother of the advocate at the relevant time. Having regard to this fact, the Trial Court ought to have permitted the Defendant to cross examine the Plaintiff and to lead evidence by imposing reasonable cost. In the facts of the case, the impugned order deserves to be set aside by directing the Defendant to pay cost of Rs. 5,000/-.

7. In view of the above, the Petition stands allowed subject to Petitioner/defendant paying cost of Rs. 5,000/- to the Respondent/plaintiff. Exhibit 37 is allowed. Learned Trial Court to ensure that the cost is paid before permitting the Defendant to cross-examine the Plaintiff. The learned counsel for Respondent/plaintiff apprehends that the Defendant may take disadvantage of this and

may attempt to delay the proceeding. It is therefore clarified that if Defendant or his counsel remain absent, it would be open for the Trial Court to pass even adverse order against him.

(R. M. JOSHI)
Judge

dyb