



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10188 OF 2022

Nemichand Hanmantrao Kanote Since Deceased Through Lrs
Trivenibai Nemichand Kanote

VERSUS

Nitiniketan Shikshan Sanstha Through Its Secretary Anil
Vithalrao Kolhe And Others

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Mr. R. K. Ashtekar, Advocate for the Petitioner

Mr. B. B. Bhise, AGP for Respondents-State

Mr. V. D. Gunale, Advocate for Respondent no.1

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CORAM : ROHIT W. JOSHI, J.

DATED : 11TH JUNE, 2025

PER COURT :-

. The present petition is filed challenging order dated 07.09.2022, passed by the learned Civil Judge, Senior Division, Mukhed on application at Exh.133 in Special Civil Suit No.21 of 2009, thereby rejecting the application filed by the petitioners/legal representatives of original defendant no.1 for recalling order dated 14.11.2014 passed by the learned Trial Court to proceed with the matter without cross examination of the plaintiff, i.e. PW-1. The said order was passed on 18.10.2014 and the application for recalling the said order is filed on 23.06.2022, i.e. after a period of more

than seven and half years.

2. Learned Counsel for the petitioner contends that in order to enable the defendants to effectively contest the matter, opportunity of cross-examination of the plaintiff and his witness should be granted, failing which, the suit will virtually be decreed without any fair contest.

3. As regards the witness no.2, it is contended that the said witness was cross-examined on 17.12.2024, however, the relevant documents for conducting effective cross examination were not available with the Advocate and thereafter permission to cross-examine the said witness should also be granted. The documents, which were then not available and were available while filing the application for recalling the witness for cross examination are not specified in the application.

4. Perusal of the order passed by the learned Trial Court will indicate that the plaintiff examined himself as PW-1 and his examination-in-chief was over on 18.10.2014. Since, the defendant did not conduct cross-examination, an order to proceed without cross-examination of plaintiff/PW-1 was passed on 14.11.2024. Thereafter, the plaintiff has examined

another witness on 17.12.2014. The defendant no.1 has conducted the cross-examination of the said witness on the said date. After examining the second witness, the plaintiff has closed his side of the evidence by filing a pursis vide Exh.64 on 17.12.2014. Thereafter, the defendant no.1 also led his evidence and closed the evidence on 11.08.2016 vide pursis Exh.75. Thereafter, the original defendant no.1 expired and the present petitioners were brought on record as his legal representatives. They filed fresh written statement. The plaintiff did not lead further evidence in view of the said written statement filed by petitioners and filed evidence closure pursis vide Exh.90 on 14.02.2020. Although, the pursis at Exh.90 is not on record, the learned Counsel for the petitioner has handed over a copy of the said document, perusal of which indicates that after written statement was filed by the petitioner an additional issue was framed, the plaintiff has not led additional evidence thereafter.

5. The plaintiff's examination was over on 14.11.2014, he was not cross examined. Plaintiff's witness no.2 was examined on 17.12.2024. This witness was cross examined on the same day i.e. on 17.12.2014. It is apparent that the

defendant did not move any application seeking permission to cross-examine the plaintiff or to conduct further cross-examination of witness no.2 of the plaintiff and after his demise, the legal representatives have moved the application after a period of around seven and half years from the date on which the evidence of plaintiff was closed.

6. Perusal of the record and the order passed by the learned Trial Court will demonstrate that the defendant no.1 and also his legal representatives were all throughout lethargic in contesting the matter. They were not diligent at all.

7. Perusal of the application will demonstrate that the petitioner no.1 was allegedly bedridden and she had also lost her son, who was a practicing Advocate. However, the particulars of the alleged ailment of petitioner no.1 are also not mentioned. The application is absolutely vague and lacks essential particulars. Apart from this, there is colossal delay in filing the application seeking recall of witness. As stated above, the evidence of the plaintiff on the first occasion was closed on 14.11.2014 and thereafter on the second occasion on 14.02.2020.

8. The learned Trial Court has not committed any error in rejecting the application for recalling plaintiff and his witness for further cross-examination. The petition is therefore dismissed with no orders as to costs.

(ROHIT W. JOSHI, J.)

Rushikesh/2025