



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

WRIT PETITION NO. 11444 OF 2024

Sudhakar Tulshiram Ghongade

VERSUS

Vivek Prabhakar Ghongade Patil

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Mr. G. T. Kharate, Advocate for the Petitioner

Mr. V. P. Kadam, Advocate for Respondent

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CORAM : ROHIT W. JOSHI, J.

DATED : 07TH JULY, 2025

PER COURT :-

. The present petition takes exception to order dated 06.08.2024 passed by the learned Civil Judge, Junior Division, Sengaon on application at Exhibit 40 in Regular Civil Suit No.25 of 2014.

2. The petitioner is the original defendant. The respondent is the original plaintiff. Parties will be hereinafter referred to as plaintiff and defendant respectively.

3. The plaintiff examined himself by filing affidavit of examination-in-chief. The defendant did not turn up for conducting cross examination. As a consequence, the learned Trial Court passed order dated 28.06.2019 directing the suit

the suit to proceed without cross-examination of the plaintiff. The defendant filed application dated 12.07.2024 vide Exhibit 40 seeking to recall the said order dated 28.06.2019 and to permit him to conduct cross-examination of the plaintiff. The said application came to be rejected vide impugned order dated 06.08.2024.

4. On hearing the respective submissions, this Court was not inclined to interfere with the impugned order. However, the learned Counsel for the petitioner has drawn attention to an application at Exhibit 43 filed by the plaintiff on 17.12.2024, *inter alia* seeking permission to lead further evidence in the matter.

5. Perusal of the application will indicate that the learned Trial Court had closed evidence of the plaintiff vide order dated 13.08.2024. The said application is allowed vide order dated 11.06.2025. Although, this application and order are not a part of record of the Writ Petition, the learned Counsel for the defendant/petitioner has produced the application and order during the course of hearing.

6. Learned Counsel for the respondent/plaintiff in fairness

does not dispute filing of the said application and the order passed thereon. He confirms on instructions from the respondent that such an application was filed, which was allowed on 11.06.2025. The application and the order passed thereon had taken on record and collectively marked as 'Exhibit-X' for identification. It is apparent that after recording his examination-in-chief, the plaintiff has also not proceed with the matter diligently. Since the matter is still pending at the stage of evidence of other witnesses of the plaintiff, it will be appropriate in the interest of justice that the defendant should be given opportunity to conduct cross-examination of the plaintiff rather than allowing the plaintiff's evidence to go unchallenged.

7. Having regard to the aforesaid circumstances, the petition deserves to be allowed. The order dated 06.08.2024 passed by the learned Civil Judge, Junior Division, Sengaon on application at Exh.40 is quashed. The application at Exhibit 40 is allowed, subject to cost of Rs.5000/- to be paid by the petitioner to the respondent within a period of four weeks from today. Petitioner/defendant shall not be entitled to seek any further accommodation for conducting the cross-

examination of the plaintiff/respondent. The cross-examination shall be conducted as and when directed by the learned Trial Court. In the event of failure on the part of the petitioner/defendant to conduct the cross-examination as aforesaid, the right to conduct cross-examination shall be lost.

(ROHIT W. JOSHI, J.)

Rushikesh/2025