

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15285 OF 2023

Bhausahab Zumbar Avhad

VERSUS

Maruti Tulshiram Avhad And Others

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Advocate for the Petitioner : Mr. Darandale Ganesh P.

Advocate for Respondent No.1 : Mr. H.D. Deshmukh

Advocate for Respondent Nos.2 to 5 : Mr. Amarjeet V. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : AUGUST 01, 2025

PER COURT :-

1. The petitioner/original plaintiff assails order dated 12.10.2023 passed by learned Civil Judge Senior Division, Newasa in Regular Civil Suit No.145 of 2012 thereby rejecting application filed below Exhibit-88 for setting aside no cross order and for grant of permission to cross-examine respondent no.1.

2. The petitioner filed Regular Civil Suit No.145 of 2012 seeking decree of partition and separate possession in respect of suit properties mentioned in para 1. It appears that issues were framed on 30.10.2015. The petitioner recorded his evidence. On 31.08.2019, respondent/defendant had filed evidence affidavit of his witness. However, petitioner failed to cross-examine him. Eventually, "no cross order" dated 11.04.2023 was passed. Thereafter on 08.08.2023, respondent no.1 filed his own evidence affidavit.

3. At this stage, petitioner filed an application below Exhibit-88 seeking to set aside “no cross order” and grant permission to cross-examine respondent no.1. The learned Judge of Trial Court rejected application observing consistent default on part of petitioner and his negligence in prosecuting the suit.

4. Mr. Darandale, learned advocate appearing for petitioner invites attention of this Court to copy of evidence affidavit of defendant no.1 and submit that same was received to plaintiff on 08.12.2020 and thereafter, matter was listed on three occasions, however, only once adjourned at the behest by petitioner. He would therefore urge that observations of Trial Court that petitioner/plaintiff is protracting the suit are incorrect. He would further urge that valuable rights regarding immovable property are involved in the suit, therefore, an opportunity to cross-examine needs to be given to petitioner by allowing application at Exhibit-88.

5. Per contra, Mr. Deshmukh, learned advocate appearing for respondent no.1 vehemently contends that record would indicate lethargic approach of petitioner. After recording petitioner’s evidence, he was consistently absent. Ultimately, the Trial Court closed his evidence and thereafter, respondent no.1 filed his evidence affidavit. At this stage also, petitioner failed to cross-examine. He endeavours to point out various orders passed by Trial Court on adjournment applications filed by plaintiff.

6. Having considered submissions advanced, it cannot be disputed that petitioner instituted suit for partition, separate possession, declaration and permanent injunction. Apparently, parties are litigating over immovable property. In such a case, the decision on merit is solicited. Although contentions of parties and observations made in impugned order attributes some fault against petitioner, he needs to be given opportunity to cross-examine defendant or his witnesses, otherwise he would suffer irreparable loss. The inconvenience to respondent can be compensated by awarding some cost. In this background, this Court deems it proper to allow the writ petition subject to certain conditions. Hence, the following order :

ORDER

- (i) Writ Petition is allowed in terms of prayer clause (B), subject to condition that petitioner deposits cost of Rs.15,000/- to be paid to defendant no.1.
- (ii) Cost to be deposited within a period of four weeks from today.
- (iii) On deposit of cost, defendant shall make himself available for cross-examination and plaintiff shall diligently conduct cross-examination without seeking unnecessary adjournments.
- (iv) In case of failure to deposit the cost within the time stipulated, the impugned order shall govern the proceeding.

(4)

(v) Needless to state that if parties co-operate, the suit shall be expeditiously decided and in any case within a period of one year from the date of this order.

(S.G. CHAPALGAONKAR, J.)