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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7773 OF 2023**

Ramchandra Tulshidas Horne ... Petitioner
Vs.
Aagari Samaj Dharmashala Shrishetra ... Respondents
Pandharpur and Others

**WITH
WRIT PETITION NO. 7771 OF 2023**

Dilip Vasant Horne ... Petitioner
Vs.
Aagari Samaj Dharmashala Shrishetra ... Respondents
Pandharpur and Others

Mr. Ajay A. Joshi for the Petitioner.
Mr. Sachin S. Punde for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 17th JUNE 2025

ORDER :

1. Pursuant to the earlier order both the petitions are taken up for final disposal. Both the petitions are filed by the original plaintiff. By order dated 30th January 2020 this court had permitted the respective plaintiffs in both the suits to cross examine defendant no. 1 subject to payment of cost of Rs. 2500/-. The plaintiff in both the suits were unable to pay the costs within time, hence, they filed application in the respective suits for permission to pay costs. The application for permission to pay costs is rejected by the impugned

orders in both the suits. The permission to pay cost is refused on the ground that this court vide order dated 30th January 2020 had directed the plaintiff in both the suits to pay costs by specific date i.e. 6th February 2020. The impugned order holds that since the costs was not paid before the specified date the application for permission to pay costs would not be tenable. Thus the order passed in the suits is challenged by respective plaintiffs in these petitions.

2. Learned counsel for the petitioners in both the suits submits that due to covid pandemic the period for compliance stood extended. He submits that the plaintiffs in both suits were unable to pay the costs only because of covid pandemic. He further submits that to compensate the delay in complying with the order to pay costs the plaintiffs in both the suits are ready to pay costs of Rs.5000/- instead of Rs.2500/- as initially directed.

3. He further submits that if the respective plaintiffs are not permitted to pay costs serious prejudice would be caused as the right to cross examine would stand forfeited. He thus submits that the plaintiff be permitted to pay costs as directed by this court in order dated 30th January 2020.

4. Learned counsel for the respondent submits that the extension of time granted by the Hon'ble Apex Court during the covid pandemic was applicable from 15th March 2020 upto 20th February 2022. He submits that the respective plaintiffs were directed to pay costs much prior to the covid pandemic period. He therefore submits that there is no justifiable reason to permit the plaintiffs to pay costs at this stage to avail the benefit of cross examining defendant no.1.

5. I have perused the papers of both the petitions. This court vide order dated 30th January 2020 set aside the order of no cross subject to the respective plaintiffs making payment of Rs. 2500/- on the next date. Payment of costs was also directed to be deposited in the trial court by 6th February 2020.

6. Since the respective plaintiffs were unable to make payment of costs within time, they filed their respective applications on 24th September 2021 for permission to pay costs. Delay in making payment of costs is pleaded because of the covid pandemic. Though the exemption granted by the Hon'ble Apex Court started from 15th March 2020 the fact remains that the compliance was required to be done by the

respective plaintiffs during the time of covid pandemic.

7. Considering the reasons stated by the respective plaintiffs in their respective application for paying costs, I see no reason to refuse permission to the respective plaintiffs. The respective plaintiffs have also shown their willingness to pay higher costs to compensate the delay. If the respective plaintiffs are not permitted to pay costs their substantive right to cross examine defendant no. 1 would be forfeited. The applications were allowed by this court on 30th January 2020 subject to payment of costs, hence, the relief to the respective plaintiffs cannot be denied on hyper technical grounds. Hence, the respective plaintiffs are permitted to pay costs for compliance of the condition imposed by this court vide orders dated 30th January 2020.

8. For the reasons recorded above both the petitions are allowed by passing the following order :

- (i) Order dated 27th September 2021 passed by the Joint Civil Judge, Junior Division Pandharpur, below Exhibit -125 in RCS No. 592 of 2007 is quashed and set aside.

(ii) Order dated 27th September 2021 passed by the Joint Civil Judge, Junior Division, Pandharpur below Exhibit -136 in RCS No. 598 of 2007 is quashed and set aside.

(iii) Respective applications below Exhibit-125 in RCS No. 592 of 2007 and Exhibit-136 in RCS No. 598 of 2007 are allowed subject to the respective plaintiffs depositing cost of Rs.5000/- each in the respective suits on the next date in the trial court i.e 20th June 2025.

(iv) Needless to clarify that if cost is paid as permitted by this order the respective plaintiffs would be entitled to cross examine defendant no. 1 as permitted by this court vide order dated 30th June 2020.

(v) It is clarified that no further time shall be granted.

(vi) Writ Petitions are disposed of in the above terms.

(vii) Needless to further clarify that the parties shall not seek unnecessary adjournments and shall co-operate for early disposal of the suit.

[GAURI GODSE, J.]