

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8067 OF 2025

1. Fareeda Shabbir Nadaf,
Age: 50, Occu.: Nil,
R/o. Shabbir Tea Stall,
Near City Bus, A/p. Talandage,
Tal. Hatkanangale, Dist.Kolhapur.
2. Hasina Iqbal Nadaf,
Age: 53, Occu.: Nil,
3. Aisha Iqbal Nadar,
Age: 39, Occu: Housewife,
4. Khutija Iqbal Nadaf,
Age: 40, Occu.: Housewife,
5. Yusub Iqbal Nadaf,
Age: 30, Occu.: Nil,
No.2 to 5 R/o.-C.T.S.No..595,
C Ward, Kolhapur.
6. Farukh Umar Nadaf,
Age: 25, Occu.: Business.
7. Shayara Umar Nadaf,
Age: 23, Occu.: Housework.
8. Shaeen Juber Mukadam,
Age: 20, Occu.: Nil,
No.6 to 8 R/o. 595/b/1/2/3,
C Ward, Aram Corner, Kolhapur.
9. Shakira Anjum Jamadar,
Age: 31, Occu.: Nil,
R/o. 1016, C Ward, Ravivar Peth,
Kolhapur.

10. Mohansin Harun Nadaf,
Age: 28, Occu.: Business,
R/o.595, C Ward, Aram Corner,
Kolhapur.
11. Sarfaraz Harun Nadaf,
Age: 26, Occu.: Business,
R/o.595, C ward, Aram Corner,
Kolhapur.
12. Sumayya Niyaz alias Riyaz Nadaf,
Age: 26, Occu.: Nil,
R/o. Korgaokar Colony,
Near Pond, Shirol,
Tal.- Hatkanangale, Kolhapur.Petitioners
Vs.
1. Farzana Husain Sheikh,
Age: 28, Occu.: Housewife,
R/o.542, B Ward, Kolhapur.
2. Musa Isakso Mujawar,
Since Deceased through legal heirs,
2a. Farzana Husain Sheikh,
Age: 28, Occu.: Housewife,
2b. Jaintabi Musa Mujawar,
Age: 75, Occu.: Housewife,
2a and 2b R/o.542, B Ward, Kolhapur.
3. Baburao Ilabaksh Sanglikar,
Since deceased through legal heirs,
3a. Imtiyaz Nuruddin Sanglikar,
Age: 23, Occu.: Service,
3b. Shabbir Nuruddin Sanglikar,
Age: 20, Occu.: Service,
No.3a and 3b R/o.: House No.818,
B Ward, Occo. Commerce College,
Kolhapur.
3c. Shirmati Anwar Babasaheb Momin,
Age: 41, Occu.: Nil,
R/o.House No.2121, Pangul Lane,

Belagao,
3d. Bai Baburao Sanglikar,
Age: 45, Occu.: Housewife,
R/o. C.T.S.No.1325/38, E Ward,
Shivaji Udyamnagar, Kolhapur.

4. Shrimati Alka Baburao Tondkar,
Age: 31, Occu.: Housewife,
R/o. C.T.S.No.515, C Ward,
Aram Corner, Kolhapur.

.....Respondents

Mr. Shantanu Patil with Mr. Kunal Nalawade, for the Petitioners.
Mr. M. N. Bindage with Mr. Padmanabh D. Pise (Through VC), for the
Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 15th SEPTEMBER 2025

PRONOUNCED ON : 19th SEPTEMBER 2025

ORAL JUDGMENT :-

1. Petitioners (original defendant Nos.2A, 2C to 2F, 3B to 3E and 4A to 4C) impugn the order dated 11th April 2025 passed by learned Civil Judge, Senior Division, Kolhapur below Exhibit 260 in Regular Civil Suit No.1327 of 2000 by which their prayer for setting aside no cross order dated 20th September 2012 has been rejected.

2. Respondent Nos.1 and 2 filed the suit for redemption of mortgage dated 15th July 1965 and 21st July 1966 and also sought possession of suit premises. It is contention of Respondent Nos.1 and 2 that suit premises was originally owned by Respondent No.2. He

mortgaged property to Respondent No.3 (original defendant No.1.). Thereafter, Respondent No.2 executed additional mortgage dated 21st July 1966 in favour of Respondent No.3 and handed over possession of suit premises. According to plaintiffs, by virtue of gift deed dated 8th April 1994, Respondent No.1 acquired ownership in the suit property and also received a constructive possession. Respondent No.1 had issued notice dated 11th April 1994 to Respondent No.3 for redemption of mortgage. However, Respondent No.3 denied to act upon the notice. Hence, the suit is filed in compelling circumstances.

3. Defendants filed written statement refuting contentions in the plaint. The trial Court framed issues based on pleadings of the parties. It appears that after framing of the issues Respondent No.1/original plaintiff had filed her evidence affidavit, however since defendant failed to cross-examine her, no cross order dated 16th October 2010 was passed, which was later on set aside vide order dated 15th February 2012. Again defendants failed to cross-examine the plaintiff. Hence, their application filed below Exhibit 173 was rejected and no-cross order dated 20th September 2012 has been passed.

4. It appears that defendant No.3 expired sometime in the year 2012. Intimation regarding his death was placed on record on 30th January 2013 and matter was pending for taking necessary steps for bringing legal representatives or serving suit summons to him. Suit was posted for evidence after appearance of legal representatives of defendant on 21st December 2014. At this stage, Petitioners filed application below exhibit 260 for setting aside no cross order dated 20th September 2012, which has been rejected by impugned order.

5. Learned Advocate appearing for Petitioners submits that the dispute in the suit pertains to immovable property. Reasonable opportunity needs to be given to the parties to put up their stand. Petitioners may lose their valuable rights in the suit property in absence of the opportunity to defend their interest. Cross-examination of the plaintiffs' witness is necessary for crystallizing rights of the parties. He would further submit that the Petitioners had deposited costs of Rs.5,000/- with trial Court in pursuance to directions given by this Court vide order dated 28th July 2025.

6. Learned Advocate appearing for Respondents, however, vehemently opposed the prayer in the writ petition contending that

the original defendants failed to take up the opportunity to cross-examine plaintiff since 2010. No-cross order was passed against them on 15th October 2010, which was set aside vide order passed below Exhibit 167 on 15th February 2012. Still they failed to cross-examine the plaintiff and eventually impugned order dated 20th September 2012 is passed, which need not be disturbed.

7. Having considered the submissions of learned advocates appearing for respective parties, it can be observed that present suit is filed seeking redemption of mortgage. The Petitioners/Defendants are in possession of suit property. Although no-cross order was passed against original defendants, subsequently, legal representatives are brought on record. The suit was pending at the stage of bringing legal representatives of defendant since December 2014. Matter was posted for evidence of defendant on 10th January 2025. At the same time, Application below Exhibit 260 was filed for setting aside no-cross order. Looking to the present stage of suit and nature of suit, it is necessary that defendants should get fair opportunity to cross-examine the plaintiff. Inconvenience caused to represent can be compensated in terms of costs. In result, this Court

deems it fit to allow writ petition in terms of prayer clause (a), subject to compensatory costs of Rs.5,000/- in addition to costs already deposited in terms of order dated 28th July 2025. In result, following order is passed.

ORDER

- i) Writ Petition is allowed in terms of prayer clause (a), subject to condition that Petitioners deposit additional cost of Rs.5,000/- with trial Court within a period of four weeks from date of this order.
- ii) If the cost is deposited within the stipulated period, same be disbursed in favour of plaintiffs.
- iii) In case of failure to deposit cost within stipulated period, Application below Exhibit 260 shall be deemed to be rejected and order dated 11th April 2025 and 20th September 2012 shall govern the proceedings.
- iv) Trial Court shall endeavour for expeditious disposal of the suit and in any case within a period of one year from date of this order.

- v) Parties to cooperate with the trial Court for expeditious disposal of the suit.

(S. G. CHAPALGAONKAR, J.)

RAJU
DATTATRAYA
GAIKWAD
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signed by
RAJU
DATTATRAYA
GAIKWAD
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