

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13953 OF 2023**

Mahesh Shivappa Umbare ... Petitioner
versus
Nilesh Ramesh Todkari and Anr. ... Respondents

Ms. Manisha Devkar with Mr. Shankar Katkar, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 24 APRIL 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. Office report indicates that the notices have been duly served on the Respondents.
3. None appeared for the Respondents – original Plaintiffs.
4. The challenge in this Petition is to an order dated 29 November 2022 passed by the learned Civil Judge, Pandharpur, whereby the application preferred by the Petitioner – Defendant to set aside the order dated 26 October 2021 whereby the right of the Defendant to cross-examine the Plaintiffs witness stood foreclosed. Learned Judge was persuaded to reject the application as the earlier application for adjournment was allowed subject to payment of costs of Rs.100/- and the Defendant had committed default in payment of costs, and, thereafter, did not turn up to cross-examine the Plaintiffs witness.

5. There might be an element of indolence on the part of the Defendant, yet it would be expedient in the interest of justice that the Defendant gets an opportunity to cross-examine the Plaintiffs witness as substantive rights are to be decided in the suit. Therefore, the impugned orders stands quashed and set aside and the Defendant is permitted to cross-examine the Plaintiffs witness, subject to the following conditions :

(a) The Defendant shall deposit costs of Rs.2,000/- before the trial Court within a period of three weeks from the date of uploading of this order.

(b) The Defendant shall not seek any adjournment for conducting cross-examination of the Plaintiffs witness.

(c) After the cross-examination of the Plaintiff's witness is over and the Plaintiffs evidence is closed, the Defendant shall file an affidavit in lieu of examination in chief of the Defendant and his witnesses within a period of 30 days.

(d) The Defendant shall cooperate with the trial and shall not seek unnecessary adjournments.

The Writ Petition stands disposed.

(N.J.JAMADAR, J.)