

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 149 OF 2025

Uttam Ramchandra Donde ..Petitioner
Versus
Dineshkumar Ramchandra Tulasthan & Ors ...Respondents

Mr. Vishal Tambat, with Chaitali Bhogle, Rishabh Tiwari & Rochelle
Fernandes, for the Petitioner.
Mr. Sandeep D. Shinde, for Respondent No.1.

CORAM: N. J. JAMADAR, J.
DATED : 9 JANUARY 2025

P.C.:

- 1.** Heard learned Counsel for the parties.
- 2.** The challenge in this Petition is to an Order dated 2nd December 2024, whereby the learned Civil Judge, Senior Division, Nashik, was persuaded to reject the Application to set aside the “no cross order” passed against the Petitioner on 20th June 2024. The learned Civil Judge was of the view that the Petition was not supported by any document or Affidavit.
- 3.** The learned Counsel for the Petitioner submitted that further examination-in-chief of the Plaintiff’s first witness was completed in

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February 2020. There was no deliberate inaction on the part of the Petitioner in cross-examining the Plaintiff's witness.

4. The learned Counsel for the Respondent-Plaintiff submitted that the trial court had once set aside "no cross order" and yet the Defendant chose not to cross-examine the Plaintiff's witness and, in the meanwhile, executed an instrument creating third party interest in the suit property. Therefore, the trial court was justified in declining to set aside the "no cross order".

5. There might be an element of indolence and want of diligence on the part of the Defendant in defending the suit. Nonetheless, to advance the cause of substantive justice and the determination of the suit on merits, it may be expedient to give an efficacious opportunity to the Defendant. At the same time, the Defendant need to be put to terms.

6. Hence the following order.

O R D E R

(i) The impugned order dated 2nd December 2024 stands quashed and set aside subject to the following conditions.

(a) The Defendant shall cross-examine the Plaintiff's witness on 28th January 2025, the scheduled date before the trial court, and the Defendant shall not seek any adjournment on any count whatsoever for the conducting cross-examination of the Plaintiff's witness.

(b) The Defendant shall pay costs of Rs.10,000/- to the Plaintiff. The costs be deposited before the trial court on or before 24th January 2025.

(c) Petition disposed.

(d) The trial court is requested to make an endeavor to conclude hear and decide the suit as expeditiously as possible.

[N. J. JAMADAR, J.]