

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1121 OF 2025

Sushila Gopal Tejale

...Petitioner

Versus

Babanbai Sakharam Chandramore & Ors

...Respondents

Mr. Sanjeev Sawant, with B.K. Barve, Sandeep Barve and Santosh Wagh, i/b B.K. Barve & Co, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATE: 29th JANUARY 2025

ORDER:-

1. Heard the learned Counsel for the Petitioner.
2. The Petitioner/Plaintiff has assailed the legality, propriety and correctness of an Order dated 25th October 2024 passed by the learned Civil Judge, Nashik, on an Application (Exhibit "214"), thereby setting aside 'No Cross' order passed against Defendant Nos. 6a to 6e, 7 and 13.
3. The Petitioner has instituted a Suit for specific performance of contract to sell the suit property. In the year 2010, orders to proceed "without Written Statement" of the Defendants were passed. The Defendants filed an Application to set aside 'No Written Statement' order, after about eight years. The trial court condoned the delay and

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permitted the Defendants to file Written Statement subject to payment of costs of Rs.5,000/-. The Petitioner assailed the said order before this Court in Writ Petition No. 4642 of 2019.

4. By an order dated 26th September 2019, this Court declined to interfere with the said order. However, an additional costs of Rs.50,000/- was ordered to be paid, and considering the fact that the suit was instituted in the year 2020, this Court expedited the suit and requested the trial court to hear and decide the suit preferably within a period of nine months thereof.

5. By a further order dated 5th March 2021, the time came to be extended by six months.

6. In the meanwhile, on 27th March 2024, Defendant Nos. 6a to 6e, 7 and 13 filed an application to recall the 'No Cross' order passed by the trial court. By the impugned order, the learned Civil Judge was persuaded to set aside the 'No Cross' order subject to costs of Rs.10,000/- to be paid to the Plaintiff.

7. Mr. Sawant, learned Counsel for the Petitioner, vehemently urged that by a cryptic order the learned Civil Judge set aside 'No Cross' order passed almost a decade ago. No reason has been ascribed by Defendant Nos. 6a to 6e, 7 and 13 for condonation of such huge delay. The application to set aside 'No Cross' order singularly lacks any ground which could justify setting aside of the said order. Without delving into

the aspect of sufficiency of the cause for delay, the learned Civil Judge has allowed the application in a mechanical manner. Therefore, the impugned order warrants interference.

8. To buttress these submissions, Mr. Sawant placed reliance on the decision of the Supreme Court in the cases of **Balwant Singh (Dead) Vs Jagdish Singh & Others**,¹ **Union of India and Another Vs Jahangir Byramji Jeejeebhoy (D) through His LR**² and **Pathapati Subba Reddy (Died) By L.Rs. And Others Vs Special Duty Collector (LA)**³

9. I have perused material on record including Roznama of the proceedings. The submission of Mr. Sawant that the impugned order does not spell out reasons and only records that it would be in the interest of justice to decide the matter on merits, appears well-founded. The question that, however, wrenches to the fore is, whether in the facts of the case, the court should interfere with an order which advances the cause of determination of the *lis* on merits by providing an opportunity to the Defendants to cross-examine the Plaintiff and his witnesses?

10. First and foremost, it is necessary to note that the 'No Written Statement' order was set aside by the trial court and this court declined to interfere with the said order, in the year 2019. In the meanwhile, in the year 2014 itself, the evidence of the Plaintiff was recorded and 'No

1 (2010) 8 SCC 685.

2 2024 SCC OnLine SC 489.

3 2024 SCC OnLine SC 513.

Cross' order was passed against the Defendants. The necessary corollary of the order setting aside 'No Written Statement' order and permitting the Defendants to file the Written Statement was that, the Defendants ought to get an opportunity to contest the suit on merits. From this stand point, the submission of Mr. Sawant that the delay ought to be reckoned from the year 2014, though technically correct, does not appear to carry substance if considered through the prism of substantive justice.

11. It could be urged that immediately after the order passed by this Court in the year 2019 declining to interfere with the order of the trial court to set aside 'No Written Statement' order, the Defendants should have filed an application to set aside 'No Cross' order. There is an amount of delay, on that score. In the application, the Defendants assert that their erstwhile Advocate did not properly advice them and, therefore, application could not be filed to set aside 'No Cross' order. In the event the Defendants are not permitted to cross-examine the Plaintiff and his witness, the Defendants would suffer irreparable loss.

12. It is also necessary to note that the application to set aside 'No Cross' order was filed on 27th March 2024 and till October 2024, the Plaintiff did not file any reply thereto. On 25th October 2024 the trial court noted that no say was filed on behalf of the Plaintiff and since it was in the interest of justice to decide the matter on merits, the 'No

Cross' order deserved to be set aside. The want of resistance on the part of the Plaintiff, undoubtedly, does not relieve the Court of its duty to satisfy itself that a sufficient cause was made out to set aside the said order. However, the want of resistance might have persuaded the trial court not to record elaborate reasons.

13. Nonetheless, at this stage, when this court had permitted the Defendants to file the Written Statement, after five years of the passing of the 'No Cross' order, and the said Written Statement has been taken on record, it is in the interest of justice that an effective opportunity to defend is granted to the Defendants. Merely permitting the Defendants to file Written Statement without setting aside the order of 'No Cross', may not constitute an effective opportunity to the Defendants. In this view of the matter, I am not persuaded to entertain this Petition.

14. At the same time, the fact that the suit could not be disposed despite the orders of this Court stipulating a time-frame for the disposal of the suit cannot be lost sight of. Therefore, the Defendants are required to be put to terms and appropriate directions for conclusion of the trial within a time-frame, are required to be issued.

15. Hence, the following order.

ORDER

- (i) The Petition stands dismissed.

(ii) The learned Civil Judge seized with SCS No. 87 of 2010 is requested to make an endeavour to hear and decide the suit as expeditiously as possible and, positively, within a period of six months from the communication of this order.

(iii) The Defendants shall not seek any adjournment for the cross-examination of the Plaintiff's witness on any count whatsoever.

(iv) If on the scheduled date, the Plaintiff and his witnesses are available for cross-examination and the Defendants seek adjournment, the trial court would be at liberty to pass 'No Cross' order and, thereupon, the right of the Defendants to cross-examine the particular witness shall stand forfeited.

(v) In the event the Defendants propose to adduce their evidence, the Defendants shall file the Affidavit in lieu of examination-in-chief of the Defendants and their witnesses, within a week of the closure of the evidence of the Plaintiff.

(vi) In the event of failure on the part of the Defendants to lead evidence within one week of closure of the evidence of the Plaintiff, the trial court shall be at liberty

to pass an appropriate order forfeiting the right of the
Defendants to lead evidence.

[N. J. JAMADAR, J.]