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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8433 OF 2025

Dilip Jotirav Patil

.....Petitioner

Vs.

Sidharth Gunwant Shah

.....Respondent

Mr. S.C.Mangle, Advocate for the Petitioner.

CORAM : GAURI GODSE, J.

DATE : 2nd JULY 2025

ORDER:

1. This petition is filed by the defendant to challenge the Order rejecting the application to set aside Order of 'no cross' of the plaintiff and his witness.

2. This Application was the third application to set aside no cross Order. The learned Judge, has refused to set aside the no cross Order, as despite giving opportunity, the cross-examination was not conducted by the present petitioner.

3. Learned counsel for the petitioner submits that the petitioner was unable to conduct the cross-examination of the

plaintiff and his witnesses, as the Advocate was unavailable on the given date. Learned counsel for the petitioner submits that he is ready to pay cost for the default on the part of the petitioner. He submits that by imposing terms upon the petitioner, he may be granted an opportunity to cross-examine the petitioner and his witnesses.

4. I have perused the papers of the petition.

5. As per the dates referred to in the impugned order, the plaintiff filed his Affidavit of Evidence on 7th January 2020. Thereafter on 26th August 2022, the petitioner's adjournment application was refused and there was an order passed of 'no cross'.

6. The plaintiff thereafter filed Affidavit of Evidence at Exhibit 27 of his witness. Even for the said witness there was an order of no cross passed on 23rd February 2023. On 28th March 2023, the petitioner's application was allowed and the no cross orders passed below Exhibit 20 and 27, were set aside and the petitioner was granted opportunity to conduct the cross-examination.

7. However, since the petitioner did not complete the cross examination, again an Order of 'no cross' was passed. Thereafter,

again on 27th November 2023, an order of 'no cross' was passed. Initially the application was rejected on 27th November 2023. However, it was recalled on 8th February 2024, on payment of costs of Rs.1500/-. Though costs was paid, cross-examination was not conducted.

8. Hence, the third Order of 'no cross' was passed on 14th October 2024. The petitioner thereafter moved the third application for setting aside no cross order which came to be rejected by the impugned Order.

9. The learned Judge has therefore held that though the affidavit of evidence of plaintiff is filed since 2020, the defendant has avoided to cross examine inspite of giving ample opportunities. The application was therefore rejected.

10. The suit against the petitioner is for specific performance of a contract, which is pending since 2015. Despite giving opportunities the defendant has failed to cross-examine the plaintiff and his witnesses. In view of these admitted facts, I do not find any illegality or perversity in the reasons recorded by the learned Judge in the impugned order. Considering the ample opportunities given to the petitioner on earlier occasions the

reasons recorded by the learned Judge in rejecting the application cannot be faulted. This is not a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India, to interfere with the impugned Order. The conduct of the petitioner does not warrant any interference by this Court. Interfering with these orders would amount to causing prejudice to the rights accrued in favour of the plaintiff.

11. Hence, for the reasons recorded above, petition is dismissed.

12. The learned counsel for the petitioner seeks to rely upon the Order of this Court in Writ Petition No.2605/2019, to support his submissions that the petitioner should be permitted to cross-examine the plaintiff and his witnesses. The Order relied upon by the learned counsel is in the facts of the case and there are no legal principles settled in the Order, which would assist the arguments made on behalf of the petitioner.

[GAURI GODSE, J.]