



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.986/2025
Bhanudas V Kisanrao and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.G. Kavimandan, Advocate for petitioner.
Mr. J.B. Kasat, Advocate for respondent nos.1A,B and 5.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 13-10-2025.

Learned Counsel for the petitioner seeks leave to delete respondent nos.2, 3 and 4 for the reason that they are not the contesting respondents.

2. Leave to delete respondent nos.2, 3 and 4 is granted at the risk of the petitioner. Necessary amendment may be carried out forthwith.

3. Petitioner has challenged order dated 26-09-2024 passed by the trial Court, rejecting the petitioner's application at Exhibit-135 for setting aside order below Exhibit-01 and permission to cross examine defendant no.5-Shyam Mehetre. Learned Advocate for the petitioner submits that the petitioner who is the plaintiff desires to cross examine defendant no.5 in order to establish his case for removal of encroachment. It is submitted that the right to cross examine the witness is a valuable right and without affording an opportunity to the plaintiff the suit will not be completely and effectively adjudicated. He submits that although earlier the plaintiff failed to cross examine defendant no.5, but now he is ready to cross examine defendant no.5 if an opportunity is afforded to him.

4. Mr. Kasat, learned Advocate for respondent nos.1A,B and 5 opposes the petition by pointing out that the plaintiff has not been diligent, however he does not dispute that right of cross examination of a witness is a valuable right.

5. Although, earlier the plaintiff had sufficient opportunities and he has failed to conduct cross examination at the relevant time, however, the plaintiff need not be completely deprived to conduct the cross examination. Hardship suffered by defendant no.5 can be compensated by awarding appropriate costs. By order dated 24-02-2025, while issuing notices in this petition this Court had directed the petitioner to deposit an amount of Rs.25,000/-, which was a direction to show his *bonafides*. Accordingly, the petitioner has already deposited the amount of Rs. 25,000/-. As regards the amount of costs, learned Counsel for the petitioner requests for reducing the amount, however in view of the fact that the amount of cost was already indicated by this Court, the request cannot be entertained, at this stage.

6. In view of this, impugned order dated 26-09-2024 on Exhibit-135 in Regular Civil Suit No.81/2010 is quashed and set aside, subject to cost of Rs.25,000/-. The petitioner/plaintiff is directed to conduct cross examination of defendant no.5 on the next date, to be fixed by the trial Court.

7. The amount of Rs. 25,000/- which is deposited by the petitioner in this Court, be transferred to the Court of Civil Judge Junior Division, Sindkhed Raja, District Buldhana and defendant no.5 be permitted to withdraw that amount from the District Court.

8. Writ petition is accordingly disposed of.

(Prafulla S. Khubalkar, J.)