



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

WRIT PETITION NO. 1437/2025

(WASUDEO SITARAM KALE **VERSUS** DEVENDRA SURAJMAL KATARIYA & ANOTHER)

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

Court's or Judge's order

Shri K.R. Giripunje, Advocate with Shri S.V. Sirpurkar, counsel for the petitioner.
Shri G.C. Khond, counsel for the respondent no.1.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 19, 2025

Heard the learned counsels for the parties.

2. The petitioner's challenge is to the order dated 05.02.2025 passed by the trial Court rejecting the application at Exhibit 67 for setting aside the orders below Exhibits 36 and 66 and for grant of permission to cross-examine the plaintiff.

3. The petitioner is the original defendant no.1 in the civil suit filed by the respondent no.1 seeking specific performance of contract and temporary injunction. It is the case of the petitioner that when the civil suit was posted for evidence on 22.01.2025, the counsel appearing for him was travelling from Wani to Kelapur for reaching the Court. Due to sudden colic pain during travel, the said counsel could not attend the Court. It is submitted that since the counsel failed to attend the Court on that day, the order of 'No Cross' was passed. It is submitted that the inability of the counsel to remain present and conduct cross-examination on that day was informed by the defendant no.1 to the trial Court. However, on 22.01.2025 the trial Court recorded on deposition at Exhibit 36 that the

defendant no.1 had refused to cross-examine the plaintiff's witness. The application filed by the defendant no.1 for grant of time to conduct cross-examination, *vide* Exhibit 66, also came to be rejected. Since the refusal to conduct cross-examination was wrongly recorded, on the next date an application at Exhibit 67 was filed by the defendant no.1 for setting aside the order below Exhibits 36 and 66 and for grant of permission to cross-examine the plaintiff's witness. This application came to be rejected by an order dated 05.02.2025 and the same is challenged by way of the instant petition.

4. The learned counsel for the petitioner submitted that the trial Court has rejected the application mainly on the ground that it was not supported by any medical certificate showing that the counsel for the petitioner had colic pain on that day and was not able to attend the Court. It is submitted that the Court disbelieved the medical emergency of the counsel for the petitioner and passed the order rejecting the application which amounts to denial of opportunity to conduct cross-examination of the plaintiff's witness. He therefore prayed for an opportunity to conduct cross-examination by quashing the impugned order.

5. Per contra, Shri G.C. Khond, learned counsel for the respondent no.1 opposed the petition and submitted that the defendant no.1 himself refused to conduct the cross-examination and therefore the order dated 22.01.2025 was rightly passed by the trial Court on deposition at Exhibit 36. He submitted that the only

reason put forward by the petitioner for recalling the order of 'No Cross' with respect to the medical emergency of his counsel which is an afterthought and in absence of any supporting document, the trial Court has rightly passed the impugned order.

6. The primary reason for passing the impugned order is that the application was not supported by any medical certificate showing the ailment of the counsel for the defendant no.1. Although the narration of the facts mentioned in the impugned order shows that the defendant no.1 was not diligent in cross-examining the plaintiff's witnesses however, the impugned order passed on the application for setting aside the 'No Cross' order is on account of failure to file medical certificate by the counsel. It is crucial to note that the defendant no.1 was contesting the civil suit on merits and was entitled to have an opportunity to conduct the cross-examination of the plaintiff's witness. Record shows that the defendant no.1 was not at all diligent in the suit however, the order rejecting permission to conduct cross-examination is harsh and amounts to denial of justice as the defendant no.1 would be deprived from contesting the case on merits. In the facts and circumstances of this particular case, a pragmatic approach needs to be adopted to enable the parties to contest the suit on merits. Therefore, in the interest of justice, an opportunity needs to be granted to the petitioner-defendant no.1 to conduct the cross-examination by appropriately compensating the respondent no.1 in view of the hardship likely to be suffered.

7. Considering the abovementioned factual and legal aspects, the writ petition needs to be allowed. Hence, the following order is passed:-

- I. The order dated 05.02.2025 on application at Exhibit 67 passed by the Court of Joint Civil Judge (Senior Division), Kelapur in Special Civil Suit No.17 of 2016 is quashed and set aside.
- II. The application filed by the petitioner-defendant no.1 at Exhibit 67 for setting aside the orders below Exhibits 36 and 66 is allowed subject to costs of Rupees Ten Thousand to be paid by the petitioner-defendant no.1 to the respondent no.1-plaintiff within three weeks from the date of uploading of this order.

8. The writ petition is accordingly disposed of.

(PRAFULLA S. KHUBALKAR, J.)