



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

Writ Petition No.2837/2024
Sadanand V Kailesh and another

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

Court's or Judge's orders

Mr. N.R Tekade, Advocate for petitioner.
Mr. A.S. Thotange, Advocate for resp. no.2.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 19-11-2025.

Heard learned Counsel for the petitioner as well as learned Counsel for the respondents.

2. Petitioner's challenge is to order dated 08-04-2024 passed by the trial Court, rejecting the petitioner's application for setting aside no cross order and permission to cross examine the witness.

3. The petitioner is original defendant no.1 in the suit which is filed by the respondents for permanent and mandatory injunction. In the suit, evidence of plaintiff's second witness was recorded on 21-02-2024 and on next date i.e on 16-03-2024 on account of failure of defendants to cross examine the witness, no cross order was passed. The petitioner applied for setting aside of this order and sought for permission to conduct cross examination. However, same was rejected and hence the instant petition is filed. Learned Counsel for the petitioner submits that thereafter no cross order was passed on 16-03-2024. On next date i.e. on 22-03-2024 the Court was on leave and thereafter on the subsequent date i.e. 02-04-2024 the application at Exhibit-100 seeking for setting aside no cross order was filed. It is submitted that the application is rejected thereby depriving the petitioner from conducting cross examination which

is his valuable rights. Petition is opposed by learned Counsel for respondents. He submits that the witness of the respondent is a responsible Municipal Officer and although he had remained present before the Court defendant no.1 failed to conduct cross examination. He therefore submits that the petitioner was not diligent in prosecuting the case and justifies the impugned order.

4. Having regard to the fact that no cross order was passed on 16-03-2024 and the application for setting aside no cross was filed on the next possible date i.e. on 02-04-2024, it is clear that there was no negligence and delay on the part of the petitioner in submitting the application. Trial Court ought to have considered the fact that the petitioner/defendant no.1 has filed the application immediately and the same ought to have been allowed. It has to be noted that conducting cross examination is a valuable right of the parties and the parties cannot be deprived of this valuable right on account of technical reasons. Perusal of the impugned order shows that the approach adopted by the trial Court is not pragmatic and not warranted for effective and complete decision of the suit on merits.

5. For these reasons, writ petition is allowed. It has to be also noted that the witness is an officer of Municipal Corporation, the hardship can be compensated by awarding costs. Hence, order dated 08-04-2024 passed by the trial Court on application Exhibit-100 in Regular Civil Suit No.167/2008 is quashed and set aside however, subject to costs of Rs. 5000/- to be paid by the petitioner to the respondent no.2 within two

weeks from today. The amount of costs be deposited before the trial Court.

6. Petitioner is directed to conduct cross examination of the plaintiff's witness within one month from the next date, provided the witness is made available for cross examination.

7. Writ petition is accordingly disposed of.

(Prafulla S. Khubalkar, J.)