



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

WRIT PETITION NO.3280/2025

Smt. Jankibai wd/o Raghunathrao Damkondwar and Ors. .Vs. Vyankatrao Anandrao
hatwar (Dead) thr. LR's 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. V. U. Waghmare, Advocate for petitioners.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 25, 2025

Heard.

2. Challenge is to order dated 30.01.2025 passed below Exh.-115, thereby rejecting the application filed by petitioners – defendants to set aside 'No Cross' order passed on 19.09.2025. The Trial Court assigned following reasons to reject the application, which will also depict the conduct of petitioners.

"3. Perused record. Heard both sides. The matter is more than 10 years old. From the record it reflects that the plaintiff examined PW-1 vide Exh.44 on 06.12.2018 and completed examination in chief on 01.12.2021. Thereafter, on 18.02.2022 no cross order was passed against defendants. Thereafter, witness examined PW-2 below Exh.103 on 04.03.2022. But defendants were absent so, no cross order passed against them. It is pertinent to note that, on 29.03.2022 and 07.04.2022 defendants failed to lead their evidence so, on 07.04.2022 evidence closed order was passed against them. Subsequently, on 28.04.2022 plaintiff filed his Written Notes of Argument at Exh.106. On 05.05.2022, defendants filed application at Exh. 108 for setting aside no cross order and seeking permission to lead evidence. The said application was allowed by order dated 05.07.2023, but thereafter defendants failed to cross-examine plaintiff till 19.09.2024. This clearly shows that, defendants are trying to prolong the matter since beginning. The matter is more than 10 year old. But defendants are very reluctant in proceeding with

the matter. Though the defendants contended that, both the parties are ready to settle the matter but, from the detailed say at Exh.117 filed by plaintiff it is clear that the defendants are trying to protract the matter under the veil of mediation...”

3. As could be seen, the respondent-plaintiff's chief-examination was completed on 01.12.2021. Thereafter on 18.02.2022, 'no cross' order was passed against the petitioners. Respondent examined second witness on 04.03.2022, still petitioners failed to cross-examine the said witness also. The respondent's evidence was then closed. The petitioners failed to lead evidence and, therefore, on 07.04.2022, the petitioners' evidence was also closed. Subsequently, the respondent filed written notes of argument. It is, at such a belated stage, the petitioners filed application for setting aside no cross-order and sought permission to lead evidence. The Trial Court was generous enough to allow the application and permit the petitioner to conduct cross-examination and lead evidence. Despite such situation, the petitioners failed to cross-examine the respondent's witness during the period from 05.07.2023 till 19.09.2024.

4. Considering the aforesaid conduct and further that the suit is more than 10 years old, the Trial Court proceeded to pass the impugned order by imposing costs of Rs.2000/-.

5. When inquired, counsel for the petitioners informs that the costs is not paid.

6. Thus the petitioners have no respect to the judicial proceedings and the orders passed by the Court and have filed present petition challenging the aforesaid order. The conduct of the petitioners is such, that would only require dismissal of the petition with further costs.

7. Accordingly, the petition is dismissed with costs of Rs.5,000/-, which the petitioners shall pay within two weeks from today, failing which the Registry shall proceed to recover the costs as land revenue.

(Anil L. Pansare, J.)

Kahale