



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

Writ Petition No.4318/2025
Motiram and another V Ku. Divya 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. V.B. Bhise, Advocate for petitioners.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 15-12-2025.

The record reveals that the notice of the instant petition is served upon the respondents as per the office endorsement dated 06-10-2025. However, nobody has filed appearance on behalf of the respondents and today also nobody appears for the respondents.

2. Heard learned Counsel for the petitioners.

3. Petitioner's challenge is to order dated 02-05-2025 passed by the trial Court, rejecting the application for setting aside no cross examination order and permission to conduct cross examination of the plaintiffs witness.

4. The petitioners are defendant nos.1 and 3 in Special Civil Suit No.28/2022. Learned Counsel for petitioners points out that during evidence of the plaintiffs, on 25-10-2024 on account of absence of the Counsel for the petitioners/defendants no.1 and 3, the order of no cross was passed. Thereafter, when an application was filed on behalf of the petitioners for setting aside no cross order, the same is rejected mainly for the reason that the application does not mention any elaborate reasons seeking permission to conduct cross examination. Learned Counsel for the

petitioners points out that on 25-10-2024, when no cross order was passed against defendant nos.1 and 3, an identical order of no cross was passed also against defendant no.2. It is pointed out that a separate application was filed on behalf of defendant no.2 for setting aside no cross order and permission to conduct cross examination which was allowed by order dated 21-03-2025 subject to costs of Rs. 500/-. However, the application filed by the petitioners/defendant nos. 1 and 3 was rejected by only mentioning that there are no sufficient reasons mentioned in the application.

5. It has to be noted that opportunity to conduct cross examination is a valuable right of the parties and denying them the right to conduct cross examination would render them defenseless. Although the application filed by defendant nos.1 and 3 does not spell out elaborate reasons, however, in the interest of justice the same needs to be considered in order to protect the rights of the parties to conduct cross examination. Further, having regard to the fact that similar application of the defendant no.2 was allowed, there is no reason to deprive the defendant nos.1 and 3 to have the opportunity to conduct cross examination. The hardship likely to be caused to the plaintiff can be compensated by awarding costs.

6. Having regard to these factual and legal aspects, the impugned order is quashed and set aside. Application filed by the petitioners/defendant nos.1 and 3 in the suit at Exhibit-33 is allowed, subject to costs of Rs. 5000/- to be paid by the defendant nos.1 and 3 to the plaintiffs within a period of one week from today.

7. Defendant nos.1 and 3 are directed to conduct cross examination on the next date.

8. In view of this, Writ Petition is allowed and disposed of.

(Prafulla S. Khubalkar, J.)