

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 723 OF 2018

Gopal Balwant Vhatkar	...	Petitioner
V/s.		
Dhondiram Balwant Vhatkar & Ors.	...	Respondents

- Mr.Prashant Bhavake for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioner.

- 2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 29th July 2017 passed by the Civil Judge Junior Division, Panhala, below Exhibit-45 in Regular Civil Suit No.122 of 2014 and also the order passed below Exhibit-33, on the same day, of “no cross examination” of Plaintiff in view of refusal of Advocate for the Petitioner to cross examine him.

- 3] As regards the first order passed below the Application at Exhibit-45, the said application was for framing of additional issues

and it was filed by the Petitioner under Order-14 Rule-5 of Code of Civil Procedure. It was contended that the co-owners of the property are not joined as a party to the suit and hence, the suit is bad for non-joinder of necessary parties. Moreover, the suit claim is also not properly valued and hence, these two additional issues are required to be framed.

4] The trial Court has rejected the said application, and in my considered opinion, rightly so, because neither in the present application nor in the written statement in paragraph No.3, to which the reference is made in this application, the Petitioner has stated that who are those necessary parties. A mere vague plea is raised that suit is bad for non-joinder of necessary parties and on such a vague plea, no issue is required to be framed. Even as regards the valuation of the suit claim, the impugned order passed by the trial Court goes to show that the Respondents/Plaintiffs has not claimed any relief in respect of the suit property, bearing CTS No.654 in paragraph 1B of the plaint. Therefore, there was no question of paying any Court fees thereon. Hence, it was not necessary to frame that issue also.

5] Thus, impugned order passed by the trial Court, below application at Exhibit-45, does not suffer from any illegality, so as to

warrant interference in the same.

6] As regards the subsequent order passed by the trial Court on the same day of “no cross-examination”, as a matter of fact, no fault can be found in the said order also, as Defendant No.1/the present Petitioner was absent when called out and his Advocate has declined to cross-examine the Plaintiff. In such situation, the trial Court has no option but to pass the order of “no cross-examination”.

7] As per learned counsel for the Petitioner, however, as the Petitioner intended to approach this Court against the order passed below Exhibit-45, learned counsel for the Petitioner has declined to cross-examine the Plaintiff on that day. If it was so, then, in my considered opinion, a specific prayer was required to be raised to that effect either by filing application or even by making oral submission. However, declining of cross-examination is not the proper way to do so.

8] Be that as it may, in the interest of substantive cause of justice, however, this Court is inclined to set-aside the order of “no cross-examination” and allowing the Petitioner to cross-examine the the Plaintiff, so that all the controversies between the parties can be decided on merit finally and completely and not merely on technical

ground.

9] Therefore, the Writ Petition is allowed partly. The impugned order passed by the below Exhibit-33 of no cross-examination of the Plaintiff is set-aside. The Petitioner to remain present before the trial Court on 2nd February 2018, which is the date already fixed by the trial Court, and proceed with the cross-examination of the Plaintiff without seeking any adjournment.

10] All concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]