

MHRG040027202022 	HMP No.476/2022 Rutuja Pravin Patil @ Rutuja Kushabrao Shinde Vs. Pravin Tanaji Patil
---	--

ORDER ON APPLICATION EXHIBIT 69

(Date : 04/08/2026)

The respondent has filed the present application under Section 151 of the Code of Civil Procedure seeking recall of the “No Cross Examination” order dated 28.01.2026 and the subsequent order passed on 23.02.2026 rejecting the earlier recall application. The respondent contended that on 28.01.2026, although the matter was fixed for cross-examination, his junior advocate was present before the Court, but her attendance was not marked due to an inadvertent error in the authority letter, resulting in the Court passing a “No Cross” order without granting the respondent an effective opportunity of hearing. It is further contended that the advocate on record could not remain present due to illness, and despite the junior advocate moving an application for recall, the same was rejected on technical grounds, namely absence of a proper authority letter, lack of supporting affidavit, and non-payment of costs of ₹5,000/-.

2. The respondent has further submitted that the impugned orders have resulted in denial of the valuable right of cross-examination in violation of the principles of natural justice, particularly the rule of audi alteram partem. It is also urged that the petitioner’s documents had not yet been exhibited, and therefore the stage for cross-examination had not legally commenced. According to

the respondent, procedural lapses and technical defects should not override substantial justice, especially when no prejudice would be caused by permitting cross-examination. On these grounds, the respondent prays for recall of the orders dated 28.01.2026 and 23.02.2026.

3. The petitioner has filed the reply EXH. 64 opposing the respondent's second application under Section 151 of the Code of Civil Procedure seeking recall/review of the "No Cross Examination" order. It is contended that the application is not maintainable as the respondent had earlier filed an identical application for recall of the no-cross order, which was registered as Exhibit-58 and came to be rejected by a reasoned order dated 23.02.2026. According to the petitioner, the present application is barred by the principles of res judicata and, after passing the earlier order, this Court has become functus officio in respect of the same relief. It is further contended that the respondent has failed to comply with the earlier orders imposing costs of ₹7,000/- (₹5,000/- and ₹2,000/-), and therefore, in view of Section 35-B of the Code of Civil Procedure, the respondent is disentitled from prosecuting any further application unless the said costs are first deposited.

4. The petitioner has further submitted that the respondent has deliberately remained absent from the proceedings for more than ten months, has been appearing through unauthorized proxy advocates without a proper vakalatnama, and has adopted dilatory tactics with a view to prolong the proceedings. It is also asserted that a Non-Bailable Warrant is pending against the respondent in

maintenance proceedings for recovery of arrears of ₹7,30,000/-, demonstrating his disregard for judicial orders. According to the petitioner, the respondent has filed repetitive and frivolous applications only to harass the petitioner and delay the disposal of the case. It is further submitted that the petitioner's evidence already stands closed and a "No Say" order has subsequently been passed below Exhibit-61 on 04.04.2026 closing the respondent's evidence. Therefore, reopening the stage of cross-examination at this advanced stage would seriously prejudice the petitioner and amount to an abuse of the process of law. On these grounds, the petitioner has prayed for dismissal of the application with exemplary costs, for striking off the respondent's defence under Section 35-B CPC, and for fixing the matter for final arguments.

5. Heard both sides and perused record.

6. It is an admitted position that the respondent had earlier moved an application for recall of the "No Cross" order, which came to be rejected by this Court by a reasoned order dated 23.02.2026. Therefore, the objection of the petitioner regarding maintainability and repeated invocation of the inherent powers of the Court cannot be said to be wholly without substance. Equally, the record reveals that the respondent has remained negligent in prosecuting the matter, has repeatedly sought indulgence of the Court, has failed to comply with the earlier orders imposing costs, and has thereby caused unnecessary delay in the proceedings. Such conduct certainly deserves to be recorded.

7. At the same time, it is equally well settled that the rules of procedure are intended to advance the cause of justice and not to defeat it. The right of cross-examination is a valuable and integral part of a fair trial. Unless such right is forfeited by deliberate abuse incapable of being compensated, the Court should ordinarily lean in favour of deciding the lis on merits rather than on technical defaults. Denial of an opportunity to cross-examine a witness may, in an appropriate case, result in serious prejudice to the defence and may ultimately affect the just adjudication of the dispute.

8. The petitioner has strongly relied upon the principles of res judicata, functus officio, and the provisions of Section 35-B CPC. However, the inherent powers preserved under Section 151 CPC exist to secure the ends of justice and to prevent abuse of the process of the Court. The bar under Section 35-B is intended to ensure procedural discipline and not to permanently shut out adjudication where the default can be adequately compensated by imposing realistic costs and by insisting upon strict compliance of previous directions. Likewise, the principles of res judicata cannot be applied with the same rigidity to interlocutory procedural orders where the Court, in exercise of its inherent jurisdiction, considers it necessary to prevent failure of justice.

9. It is pertinent to note that no final adjudication on the merits of the dispute has yet taken place. Though subsequent procedural orders have been passed, permitting one final opportunity to cross-examine the petitioner would not alter the substantive rights of either party. On the contrary, refusal of such opportunity may

expose the final adjudication to challenge on the ground that the respondent was denied an effective opportunity of defence. Such prejudice can be avoided by compensating the petitioner monetarily and by imposing stringent conditions ensuring that the respondent does not misuse the indulgence granted by the Court.

10. The inconvenience caused to the petitioner cannot be ignored. The petitioner has been compelled to contest repeated applications, attend several hearings by travelling 400 Km. on each day, incur litigation expenses, and suffer delay in disposal of the proceedings. Therefore, the respondent cannot be permitted to take advantage of his own defaults. The inconvenience and prejudice suffered by the petitioner deserve to be compensated by imposing substantial costs. Mere nominal costs would not meet the ends of justice in the facts of the present case.

11. Accordingly, this Court is of the considered opinion that the interest of justice would be adequately served by granting the respondent one last and final opportunity to cross-examine the petitioner, subject to strict compliance of conditions. Such indulgence deserves to be made conditional upon payment of all previously imposed costs as well as additional costs of ₹25,000/- payable to the petitioner. The respondent shall not be entitled to cross-examine the petitioner unless the entire amount of the earlier costs together with the present costs is deposited and paid to the petitioner before commencement of the cross-examination. It is further made clear that no extension of time shall be granted for payment of the said costs and that in the event of default, the present application shall

stand dismissed without any further reference to the Court and the earlier “No Cross” order shall automatically revive. No further application seeking recall or extension of time shall thereafter be entertained.

12. Therefore, I inclined to exercise the inherent jurisdiction under Section 151 CPC not because the respondent deserves indulgence, but because the ultimate object of every judicial proceeding is to decide the dispute on merits while simultaneously protecting the opposite party from prejudice by awarding realistic and deterrent costs. The substantial costs imposed herein are intended to balance the equities between the parties, compensate the petitioner for the delay and inconvenience suffered, and ensure that the respondent does not treat the process of the Court lightly in future. Hence in view of the reasons discussed in above paragraphs, I pass following order-

ORDER

- 1) Application Exh.69 is allowed subject to cost of Rs. 25000/- to be paid to the Petitioner by the respondent.
- 2) The Respondent shall also clear the costs on Exh. 46 and Exh. 58. All the costs are directed to be paid on or before next date.
- 3) On payment of all costs amount by Respondent to the Petitioner, the order dated 28/01/2016 and 23/02/2026 are set aside and permission is granted to

Respondent to conduct cross examination of petitioner on next date.

- 4) Respective Advocates of petitioner and Respondent are directed to keep the parties present on next date.

Date :- 04/08/2026.

(Vaishali Hangargekar)

Jt. Civil Judge (Senior Division), Panvel.