

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3518 OF 2015

Vikas s/o Prabhakar Patil (Fadnis),
Age: 30 years, Occ: Agri. & Business,
R/o. Jawalga (Pomadevi), Tq. Ausa,
now residing at Flat No. A-18,
Vakratund Apartment, Bankar Nagar,
Dhairi, Pune-41.

...Petitioner

versus

Ram s/o Sambhaji Sathe,
Age: 35 years, Occ: Agri. & Money
Lending Business, R/o. Makani,
Tq. Lohara, Dist. Osmanabad & ors.

...Respondents

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Mr. B.N. Patil, Advocate for petitioner
Mr. B.A. Shinde, Advocate for respondent No.1
Mr. S.Y. Patil, Advocate for respondent No. 3
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CORAM : N.W. SAMBRE, J.

DATE : 4th DECEMBER, 2015

ORAL ORDER :

Regular Civil Suit No. 50 of 2012 has reached at the stage of commencement of recording of evidence of the defendants, as evidence of plaintiff is concluded. The defendants have filed their affidavit and their examination in chief is yet to be recorded. At this stage, the petitioner-plaintiff filed an application seeking permission to examine witness namely Gangaram Badgar, who was not available on earlier occasion, as he was suffering from serious kidney

ailments. Said application Exhibit-74 seeking permission to examine said witness by opening evidence of plaintiff came to be rejected by order impugned passed on 09/03/2015 by Civil Judge, Junior Division, Ausa, as such, present writ petition.

2. Mr. Patil, learned Counsel for the petitioner-plaintiff would urge that no prejudice will be caused to respondent-defendants and it is the suit of the plaintiff, in which trial has commenced. According to him, it is necessary so as to grant complete opportunity to permit the petitioner to examine his witness namely Gangaram Badgar. He would then urge that he has already deposited amount of Rs.10,000/- towards costs in the trial Court.

3. The petition is opposed by learned Counsel for the respondents on the ground that learned trial Court has time and again granted opportunity to the petitioner to produce the said witness for recording his evidence. He would then urge that the petitioner is intentionally trying to prolong the matter and as such, prayed for rejection of the petition.

4. Having bestowed my thoughts over the submissions made, it is noted that though trial in the suit has commenced and it is at advantaged stage, the fact remains that the defendants have

tendered their affidavit for recording examination in chief, however, examination in chief in support thereof is yet to be recorded. Witness namely Gangaram Badgar was not available on earlier occasion as as stated in the application as he was suffering from major kidney ailments.

5. In my opinion, in the interest of justice, the petitioner can be permitted to produce the said witness namely Gangaram Badgar on the next date of hearing for recording his examination in chief and cross examination, subject to payment of costs of Rs.10,000/- which is already deposited, to which contesting respondent No.1 will be entitled to withdraw the same.

6. The writ petition stands allowed in above terms. It is clarified that if the plaintiff fails to produce the said witness on the next date of hearing for recording of examination in chief and cross examination, he shall cease to have any such right in future for recording his evidence.

[N.W. SAMBRE, J.]