

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8642 OF 2015

Naseem Bano Abdul Salam Shaikh	..	Petitioner
VS.		
Asgar Ali Akbar	..	Respondent

Mr. V. S. Kapse for Petitioner.

CORAM : M. S. SONAK, J.
DATE : 27 AUGUST 2015

P.C. :-

1] **Not on board. Upon production, taken on board.**

2] This petition challenges the order dated 31 July 2015, by which the Trial Court has granted an opportunity to the plaintiff to continue with cross-examination of the defendant, even though, the plaintiff, on the previous occasion, made an endorsement that the cross-examination is concluded.

3] The learned counsel for the petitioner – defendant submits that in the application at Exhibit '90' there were no reasons assigned for seeking additional opportunity. That apart, the learned counsel for the petitioner makes reference to the provisions of Order XVIII Rule 17A of the CPC and the decision of this Court in the case of

*Balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhakta & Ors.*¹, to submit that power to recall witnesses can be exercised not for the purposes of offering the witness for cross-examination by either party but for the purposes of enabling the Court to put questions to such witness, if the Court so desires.

4] Further, the learned counsel for the petitioner submitted that in this case the Advocate for the plaintiff had already substantially cross-examined the defendant and therefore, there was no case made out for granting yet another opportunity to the plaintiff.

5] Having heard the learned counsel for the petitioner and perused the record, in my judgment, no case is made out to interfere with the impugned order. The Trial Court, in paragraph 4 of the impugned order has narrated the sequence of events and the circumstances in which additional opportunity came to be granted to the plaintiff. On 24 April 2015, the plaintiff, chose to personally cross-examine the defendant and thereafter, made an endorsement that cross-examination is closed. On the next date, the plaintiff, applied for further cross-examination under the impression that he was entitled to continue with the cross-examination. Upon, being presented with the endorsement made on the previous date, the plaintiff applied for an additional opportunity in the matter. The Trial

1 2003 (4) Bom. C. R. 45

Court, has rightly observed that the plaintiff, when he made an endorsement on the previous date had not realised its true and correct import and it is for this reason that the Trial Court, which is seized of the matter and which had the opportunity to comment upon the demeanor of the parties, including the plaintiff who appeared in person has made an order granting yet another opportunity to the plaintiff. As observed by the Trial Court, this is not strictly speaking an order for recall of a witness under the provisions of Order XVIII Rule 17 of the CPC. This is merely a procedural order to promote substantial justice. Such an order does not warrant interference in the extra ordinary jurisdiction under Article 227 of the Constitution of India. Accordingly, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka