

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8826 OF 2010
WITH
CIVIL APPLICATION NO. 161 OF 2011

Pargonda Mallappya Biradar & Anr. .. Petitioners
VS.
Sachin S. Biradar .. Respondent

Mr. Mr. Umesh R. Mankapure for Petitioners.
None for Respondent.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This petition challenges order dated 4 October 2010 made by the Civil Judge, Junior Division, Jath allowing the respondent / plaintiff's application for recall of the petitioners – defendants witnesses for the purposes of cross-examination.

2] In the present case, evidence of the parties concluded on or about 15 July 2008. Thereafter, on 7 December 2009, the Court felt the necessity of and accordingly framed additional issues. In the order framing additional issues, the parties were offered opportunity to lead additional evidence, if any.

3] On 4 October 2010 the petitioners stated that they do not desire to lead any additional evidence. On 17 December 2009, the

plaintiff – respondent stated that he also do not desire to lead any additional evidence.

4] However, on 4 October 2010, the respondent – plaintiff, by means of a cryptic application stated that he desire to cross-examine the witnesses of the petitioner, in the matter of additional issues as framed. By an equally cryptic order dated 4 October 2010, the learned Civil Judge, Junior Division, Jath, has granted the respondent / plaintiff's application by observing thus :

“Issues are recasted. So other side has every opportunity to cross-examine the witnesses on recorded issues. Hence application is allowed as per Exhibit.”

5] The aforesaid impugned order is required to be set aside, normally, in view of recast of the issues, there could have been no difficulty in permitting the parties to lead additional evidence. However, the parties, in writing, stated that they do not desire to lead any additional evidence. On the aspect of recall of witnesses for the purposes of cross-examination, reference shall have to be made to the provisions contained in Order 18 Rule 17 of the CPC, which reads thus:

“17. Court may recall and examine witness :- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

6] From the aforesaid, it is clear that the Court has to be satisfied that recall of witnesses for the purposes of cross-examination is necessary for effective adjudication of the issues which arise in the matter. This Court, in the case of *Balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhakta & Ors.*¹, in the context of the provisions contained in Order 18 Rule 17 of the CPC has observed thus:

“5. The provisions of law contained in Order 18, Rule 17 of the Code provide that the Court may, at any stage of the suit, recall any witness who has been examined and may, subject to law of evidence for the time being in force, put such question to him as the Court thinks fit. The said provision of law apparently does not deal with the subject of allowing the parties to cross-examine the witness after such witness being recalled in exercise of powers thereunder. In other words, the provisions contained in Order 18, Rule 17 of the Code do not empower the Court to recall the witness for the purpose of cross-examination by either of the parties though it does permit recall of witnesses for the purpose of examination by the Court itself. Apparently, by ordering recall of the defendant no. 1 for the purpose of further cross-examination on behalf of the respondent Nos. 1 to 3 purportedly in the exercise of powers under Order 18, Rule 17 of the Code, the trial Court has clearly acted in error of jurisdiction as well as contrary to the provisions of law contained in the said rule.”

1 2003 (3) Mh. L. J. 47

7] In view of the aforesaid, the impugned order is set aside. However, the respondent – plaintiff shall be at liberty to file a fresh application in the matter within a period of four weeks from the date to be fixed by the learned Civil Judge, Junior Division. If such application is made within a period of four weeks, the learned Civil Judge to consider and decide such application within a period of six weeks thereafter, keeping in mind the provisions contained in Order 18 Rule 17 of the CPC.

8] Since the respondent / plaintiff has not appeared in the matter despite notice, the petitioners to appear before the learned Civil Judge, Junior Division, on 15 April 2015 at 11.00 a.m. and produce authenticated copy of this order. Thereafter, the learned Civil Judge, Junior Division to fix the date within four weeks from which date, the respondent – plaintiff to be given an opportunity to file fresh application seeking invocation of powers under Order 18 Rule 17 of the CPC.

9] Rule is accordingly made absolute in the aforesaid terms. There shall be no order as to costs.

10] In view of the disposal of the writ petition, civil application does not survive and is disposed of accordingly.