

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

WRIT PETITION NO. 8472 OF 2016

Narendra @ Kamalkumar Madanlal Jain
and Another

..PETITIONERS

VERSUS

Prem Govindram @ Govindrama Bhatia
and Another

..RESPONDENTS

WITH

WRIT PETITION NOS.8473 OF 2016, 8474 OF 2016 AND 8475 OF 2016

....

Mr. Vilas Patni, Advocate for petitioners.

Mr. S.S. Thombre, Advocate for Respondent No.1.

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CORAM : T.V. NALAWADE, J.

DATED : 21st SEPTEMBER, 2016

ORDER :

1. All the petitions are filed to challenge the orders made on application filed by the defendants for permission to cross-examine the witness who has filed affidavit in support of the application made under Order 39 Rule 1 of the Code of Civil Procedure by the plaintiff. The Trial Court has rejected the application. Both the sides are heard.

2. The provision of Order 39 Rule 1 shows that it is up to the plaintiff to prove his case on the basis of affidavit or otherwise for getting

relief of temporary injunction. It is up to the Court to consider as to what relief can be given on the material like affidavit filed in support of the case of plaintiff.

3. The learned Counsel for the petitioner took this Court to Order 19 Rule 2 and submitted that the Court can call such witnesses and the witnesses can be subjected to the cross-examination. It needs to be observed that provision of Order 19 Rule 2 is for different purpose. Order 19 Rule 1 and 2 shows that when for particular purpose the affidavit can be asked by the Court and for filing affidavit, permission of the Court is required, in that case only the Court can take the decision as to whether it is necessary to examine the witness himself and he needs to be subjected to cross-examination. This provision is not applicable to the provision of Order 39 (1) of the Code of Civil Procedure. There are different ways to reset the contentions made by the witness in such affidavit.

4. This Court does not find any reason to interfere in the order passed by the Trial Court. All the petitions stand dismissed.

(T.V. NALAWADE, J.)

SSD