IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO. 10261 OF 2015

NAIYYAR JAHAN BEGUM AND ANOTHERS
VERSUS
MIR EHTESHAM ALI MIR ZAFFAR ALI AND OTHERS

Shri. A.D. Kasliwal, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned 3rd Joint Civil Judge, Senior Division, Aurangabad on application Exhibit 121 filed in Special Civil Suit No.32/2011. Said application was filed by the plaintiff for giving direction to the defendants that they should first cross examine defendant No.1. This application is rejected by the trial Court. Heard learned counsel for the petitioners.

2) Learned counsel for the petitioners placed reliance on a case reported as **2009 (2) Bom.C.R. 165 (Bhujang Nathuji vs. Ramkrishna Daulat)**. This Court is avoiding to quote the observations made by this Court at paragraph 11. It appears that this Court had observed that the defendants need to cross examine each other and then only the turn of the plaintiff will come if the interest of all the defendants is common.

3) This Court has carefully gone through the plaint and the written statement filed by all the defendants in the present matter. The suit is filed for damages in respect of alleged defamation caused by defendants of the plaintiff. It is the case of all the defendants that they have not caused defamation. The defendants have filed separate written statements but they have not blamed each other for so called defamation. Thus the defence is common and their defence is of total denial. In view of these circumstances, there is no question of allowing the defendant Nos.2 and 3 to cross examine defendant No.1. In the same way other defendants cannot be cross examined by defendant No.1.

In such case only plaintiff can cross examine the defendants. There is no conflict of interest amongst the defendants. Thus, there was no necessity of filing such application or inviting such orders. With these observations the petition is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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