

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9897 OF 2016

Sarita Sameer Naik and Ors.

.. Petitioners

vs.

Jayendra Atmarai Patil

.. Respondents

Mr.Onkar Warange for the petitioner

Mr.Devendranath S. Joshi for the respondent no.2

CORAM : K. K. TATED, J.

DATE : DECEMBER 2, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioners original Applicants challenges the order dated 6.1.2016 passed by Commissioner for Employees' Compensation at Mahad below Exhibit- C-9 in W.C.A No.07/B-06/2011 allowing respondent no.2's application for recalling the petitioner for further cross-examination on the basis of papers which they have received from the police department.

3 In the present proceedings, the cross-examination of the petitioner was done on 18.6.2015. Thereafter respondent no.2

immediately on 28.10.2015 made application below Exhibit C-9 for recalling the petitioner for further cross-examination on the basis of police report/papers. That application was allowed by the Trial Court, in the interest of Justice.

4 The learned counsel for the petitioner submits that impugned order passed by the Trial Court dated 6.1.2016 is against Justice equity and good conscience. He submits that the Trial Court ought to have seen that the respondent no.2 has not assigned any reason as to why those documents were not produced by them at the time of cross-examination of the petitioner. He further submit that the Trial Court lost the sight of the fact that, the procedure laid down in the Civil Procedure Code, 1908 does not contemplate the reopening of Evidence as per the whims and wishes of the parties but it is the duty of the parties to adhere to the rules and regulation framed on that behalf. He further submits that the respondent no.2 made the said application with intention to fill up the lacuna in evidence. He submits that once the matter is closed after cross-examination is completed, court has no power to recall the witness for cross-examination. In support of this contention, he relies on the judgment of the Apex court in the mater of *Ram Rati v. Mange Ram (D) though Lrs. And others, JT 2016(3) SCC 477*.

5 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that as soon as the cross-examination of the petitioner was closed, they immediately filed the application within 3 months for recalling the petitioner for further cross-examination on the basis of papers received by them from the police authority. He submits that even the Apex Court in the matter

of *Ram Rati v. Mange Ram (D) though Lrs. And others* (Supra) specifically held in paragraph 16 that in the interest of Justice, court can allow the application for recalling the witness for further cross-examination. He relies on paragraph 16 which reads thus:

“16. Some good guidance on invocation of Section 151 of the Code of Civil Procedure to reopen an evidence or production of fresh evidence is also available in K.K.Velusamy(supra). To quote paragraph-14:

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power Under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

6 On the basis of these submissions, the learned counsel for the respondent submits that there is no substance in the present Writ Petition and same be dismissed with costs.

7 I have heard both the sides at length.

8 It is to be noted that in the present proceeding, cross-

examination of petitioner was closed on 18.6.2015. Thereafter, respondent filed application for recalling the witness immediately on 28.10.2015 on the basis that they received some police papers pertaining to the present litigation. It is to be noted that the Apex Court in the matter of ***Ram Rati v. Mange Ram (D) though Lrs. And others*** (Supra) specifically held in paragraph 16 that in the interest of Justice, court can recall the witness for cross-examination.

9 Considering the Apex Court judgment and the reason given by the Trial Court in paragraph 5 of the impugned order, I do not find any perversity to set aside the said order.

10 Hence, Writ Petition stands rejected.

JUDGE