

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 12819 OF 2015

M/s. Maneklal & Co. & Anr.

.... Petitioners

Versus

The Greater Bombay Construction Co. & Ors.

.... Respondents

Mr. Devang Singhavi, Partner of Petitioner No.1 in person.

Mr. M.R.Desai for Respondent No.1.

***CORAM : N. M. Jamdar J.
Thursday 13 October 2016***

P.C.

. Heard the partner of the petitioner no.1 in person and the learned Counsel for respondent no.1.

2. By the impugned order dated 16 March 2015 the Notice of Motion No. 1492 of 2006 taken out by the petitioner for recalling of the witness of the respondent/plaintiff and to cross-examine him further, has been partly allowed.

3. The learned City Civil Court Judge has permitted the petitioner to cross-examine the respondent no.1/plaintiff's witness

on the documents filed by the respondent no.1/plaintiff on 26 September 2011, however, has rejected the prayer for further cross-examination. As far as the prayer for further cross-examination is concerned, the petitioner submits that in any case, the witness would be attending the Court and only few questions are to be asked to this witness which will go into the root of the case and no prejudice will be caused to the respondent/plaintiff. It was contended that the earlier Advocate of the petitioner did not ask appropriate questions which will prejudice to the case of the petitioner. The learned Counsel for respondent no.1 states that the petitioner no.1 was participating throughout the proceeding and the application has taken out only for filling up the lacuna.

4. Partly relief has been granted in favour of the petitioner in respect of the documents which were produced subsequently. There is no error as regard this part of the order as documents were admittedly produced after cross-examination was over. There is no grievance that at the time of cross-examination of the respondent's witness, the petitioner was restrained in any manner in asking whatever questions that were relevant. Merely because a litigant engages an Advocate, it's duty to attend its own case over. Because the petitioner has an after thought and wants to better his case, such belated request cannot be permitted which will definitely prejudice, who will depend on the cross-examination taken by the

respondent/plaintiff. It cannot be lost sight of that the suit has been filed in the year 2006 by the respondent/plaintiff on the allegations that the petitioners are the trespassers. The writ petition appears to have been only filed to prolong the decision of the suit. No interference is warranted. Writ Petition is rejected. It is open to the respondent to make a request to the learned City Civil Court Judge for expeditious disposal of the suit.

(N. M. Jamdar, J.)