

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 783 OF 2017

Mohan Tumadu Patil
Age : 60 years; Occu: Agri.
R/o Borad Tq. Taloda
Dist. Nandurbar. ...Petitioner

Versus

Raghunath Kashinath Patil
Age : 57 years, Occu: Agri,
R/o Maloni, Tq. Agri,
Dist. Nandurbar. ...Respondent

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Mr. P. A. Bhosle, Advocate h/f Mr. A. B. Kale,
Advocate for petitioner
Mr. S. V. Natu, Advocate for respondent/sole

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 15th June, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. This petition has been moved against order dated 1st December, 2016 passed by civil judge, junior division, Taloda, on exhibit-57 in regular civil suit no. 18 of 2015. Exhibit-57 had been filed for production of documents, pursuant to order XIII, Rule 3(1) (a) of the Civil Procedure Code.

3. Plaintiff resisted the application filed by the present petitioner-defendant for production of documents and contended that said documents cannot be produced at the time of cross-examination of the witness and relied on judgment in the case of *Purushottam s/o Shankar Ghodgaonkar V/s. Gajanan s/o Shankar Ghodgaonkar & ors.* reported in 2012(6) *Mh.L.J.* 648.

4. Trial court has turned down the request made on behalf of petitioner-defendant under said exhibit for production of documents.

5. Learned counsel for petitioner-defendant has contended that substantive provisions section 145 under the evidence Act read with order XIII, Rule 3 (1) (a) of Civil Procedure Code clearly indicate that documents can be produced at the time of cross-examination of the witness of the other party. As such, request would not have been declined as provisions allow parties to produce documents during cross-examination. He contends that trial court had been swayed by Judgment reported in 2012 (6) *Mh.L.J.* 648 which had been decided on different footing, and situation therein is wide apart from present situation.

6. Learned counsel for respondent-plaintiff contends that going on by the ratio laid down and emerging, fault can hardly be attributable to the decision impugned in present petition.

7. It appears that the trial court is guided by decision of learned single Judge of this court reported in 2012 (6) Mh.L.J. 648. It appears that the judgment relied on by the trial court has been rendered in different state of affairs.

8. Head note appearing in citation 1999 (11) LJSOFT 4 may well be taken into account which reads thus:

a) " Order VII Rule 18 sub rule (2) in addition to the above stated two purposes further allows the reservation of the document even in answer to any case set up by the defendant. Under these circumstances, when the document is so reserved and produced while in the cross-examination the Court cannot object the production of that document. On the contrary, the production has to be allowed, and therefore, the reasoning given by the trial Court that good grounds should have been shown by the petitioner is not correct." (Para 6).

9. Having regard to the observations and head note so also taking into account substantive provisions under the Evidence Act, section 145 read with order XIII, Rule 3 (1) (a) of Civil Procedure Code, it is expedient to set aside order impugned in present petition and grant the petition.

10. In view of aforesaid, writ petition stands allowed in terms of prayer clause (C).

11. Writ petition stands disposed of. Rule made absolute accordingly.

[SUNIL P. DESHMUKH, J.]

vdk