

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 879 OF 2014

KANIF MARUTI MANE
VERSUS
KAMLABAI RAGHUNATH TODMAL @
KAMLABAI JAISING KASAR AND OTHERS

Advocate for Petitioner : Shri A.K. Gawali.
Advocate for Respondent No. 1 : Shri R.S. Kasar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 19th December, 2017

PER COURT :

1. By this petition, the petitioner has put forth prayer Clause 16

(A) and 16 (B) as under :

“A) The Hon’ble High Court may be pleased to quash and set aside the Judgment and Order dated 21.11.2013 passed by the Civil Judge Senior Division, Ahmednagar below Exh. 51 in Regular Civil Suit No. 791/2012, and further be pleased to allow the application below Exh. 51 thereby permitting the present petitioner to adduce evidence by filing additional affidavit of examination in chief.

B) Pending hearing and final disposal of the present Writ Petition, the Hon’ble High Court may be pleased to stay the trial of Regular Civil Suit No. 791/2012 pending on the file of learned Civil Judge Senior Division, Ahmednagar.”

2. I have considered the strenuous submissions of the learned advocates for the respective sides.

3. A short issue has been raised for the consideration of this Court and for which the extensive submissions of the learned advocates are not required to be adverted to. Suffice it to say, that the petitioner who had filed an affidavit in lieu of examination-in-chief, desired to file an additional affidavit in lieu of examination-in-chief, before he stepped into the witness box for the commencement of his cross-examination. By the impugned order dated 21/11/2013, the trial Court has rejected the application for the reason that whatever has been said in the additional examination-in-chief, could have been stated in the affidavit when it was first tendered.

4. The above issue is not longer res integra, in the light of the view taken by this Court in the matter of Banganga Co-Operative Housing Society Versus Vasanti Gajanan Nerurkar [2015 (5) BCR 813], Digambar Ramchandra Bawaskar Versus Soma Prabhu Pawar [Writ Petition No. 1539/2016, by judgment dated 19/07/2017] and Arvind Manikchand Bhavsar Versus Fulchand Onkar Agrawal and others [Writ Petition No. 284/2014, by judgment dated 09/06/2017].

5. Considering the above, this petition is allowed. The impugned order dated 21/11/2013, is quashed and set aside. The

additional affidavit filed by the petitioner/plaintiff in lieu of further examination-in-chief be taken on record. Needless to state, the defendants are at liberty to cross-examine the plaintiff on both the affidavits in lieu of examination-in-chief.

(RAVINDRA V. GHUGE, J.)

S.P.C.