

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.4731 OF 2013

Kavita W/o Arvind Jaiswal
and another. ... Petitioners.

Versus

Prakash S/o Kawadmal Advani
and another. ... Respondents.

...
Mr.A.R.Vaidya, advocate for the petitioners.
Mr.S.S.Bora, advocate for Respondent Nos.1 and
2.
...

CORAM : S.V.GANGAPURWALA, J.

Date : 28.08.2017.

PER COURT :

1. The petitioners assail the order passed below Exh.199. Mr.Vaidya, learned counsel submits that the application was made by the petitioner for recall of witnesses as the advocate who was engaged did not carry on the cross-examination as per instructions. Moreover, subsequently amendment in the pleadings was

allowed and they also insisted for recall of the witnesses. The learned counsel further submits that the application for production of documents is also rejected without considering the relevancy of the documents.

2. Mr.Bora, learned counsel submits that the present Respondents had asked the petitioners to produce those documents. Even after notice the documents were not produced and now after cross-examination was conducted, the said documents are being produced. No illegality has been committed. So also the witnesses are sought to be recalled after extensive cross-examination and on vague grounds.

3. Mr.Vaidya, learned counsel relies on the judgment of the Apex Court in the case of **"K.K.Velusamy Vs. N.Palanisamy"** reported in **AIR(SCW)-2011 - 2296.**

4. The provisions under Order 18 Rule 17-A of the C.P.C. have been abrogated by the amendment in the year 2001. The only powers the

Court now is invested with to recall the witness is U/s 151 of the C.P.C. The said powers can be exercised only in exceptional circumstances and only to subserve the cause of justice. The same can not be exercised as a matter of course.

5. One can understand the recall of witness for further cross-examination after the amendment application has been allowed by the Court. However, calling witnesses for further cross-examination merely for asking would not be permissible. The Apex Court in the case of **"K.K.Velusamy Vs. N.Palanisamy"** referred to supra has observed that even though the provisions of Order 18 Rule 17-A have been deleted by amendment, still, the Court can in exercise of powers U/s 151 of the C.P.C. can recall the witness in certain contingencies.

6. Considering the aforesaid conspectus, recall of witnesses would be permitted to the extent for cross-examination pursuant to the amendment i.e. allowed subsequently and if the petitioners feel that some part of the cross-

examination even as per the pleadings existing then were not conducted, the petitioners shall give list of questions to the Court on which the cross-examination is to be conducted and then the Court would consider the same and pass orders appropriately.

7. As far as the order rejecting the documents is concerned, those were the documents which even the plaintiffs wanted the defendants to produce, however, as at the relevant time, defendants did not produce those documents and is producing at a belated stage, I am inclined to impose cost upon the petitioners for non-production of the documents earlier.

8. In the result, I pass the following order :

(a) The petitioners may move a fresh application for recall of witnesses in light of the observations made supra.

(b) The order rejecting the application for

production of documents is quashed and set aside and the application for production of documents is allowed subject to the petitioners paying cost of Rs.10,000/- (Rupees ten thousand) to the Respondents within a period of four (4) weeks from today.

(c) The Writ Petition is disposed of with aforesaid observations. No costs.

(S.V.GANGAPURWALA, J.)

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