

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

WRIT PETITION NO. 11226 OF 2015

NARHARI SAHEBRAO NAGARGOJE
VERSUS
SHIVAJI DHARMA DHAVAL AND OTHERS

...
Advocate for Petitioner : Shri Nagargoje Ankush N..
Advocate for Respondents 1 and 2 : Shri Awasarmol Rahul O..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd August, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 21.10.2015 by which the Petitioner has been prevented from carrying out further cross-examination of the original Applicant in W.C.A. No.8/2004.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides. Respondent No.3, though served, has failed to cause an appearance either through an Advocate or in person.

3 In an earlier round of litigation between the parties in Writ Petition No.1521/2006, this Court, by judgment dated 27.07.2015, had permitted the amendment and had granted liberty to the Petitioner herein to file an additional Written Statement and cross-examine the original Claimants on the amended Written Statement as well.

4 The dispute between the parties is that the Claimants had earlier based their compensation claim on the ground that the accident took place in the land Survey No.483. Subsequently, by the amendment, Survey No.483 was replaced by Survey No.485.

5 The case of the Petitioner is that the original Claimants are literate and they could not have committed the mistake in mentioning the correct survey number. It is in this context that the first question put to the original Claimants was "What is your education?". The original Claimants objected to the said question and after considering the arguments of the litigating sides, the Trial Court has passed the impugned order concluding that the Petitioner herein would cross examine the original Claimants on the amended portion as the cross-examination on the claim petition prior to the amendment was already completed.

6 In my view, the cross-examination cannot be placed in a straitjacket formula. Sometimes some questions have to be posed in order to elicit answers from the witnesses subjected to cross-examination. If the theory of the Petitioner is that the Claimants are literate and cannot make a mistake in mentioning the correct survey number of the land, I do not find that the Petitioner was at fault in questioning the educational qualification of the said Claimant.

7 By the pendency of this petition, the proceedings below have been stayed for about two years. Eventually, if the Claimants succeed in

the claim petition, they are likely to seek compensation considering the provisions of the Employees Compensation Act.

8 Keeping the above in view, this Writ Petition is allowed. The impugned order dated 21.10.2015 is quashed and set aside. The Petitioner shall proceed to cross-examine the Claimants. Unless there is a repetition of questions keeping in view the earlier cross-examination, the Trial Court is expected to permit the Petitioner to conduct and complete the cross examination expeditiously.

9 Since the objection raised by the original Claimants, which has led to the impugned order and this petition, I deem it appropriate to observe that if the Claimants ultimately succeed in the claim petition for compensation, the interest on the compensation amount from 21.10.2015 till the passing of this order today, shall not be granted to the original Claimants.