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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3370 OF 2017

Rajesh Vasant Javlekar & Anr. ..Petitioners.

V/s.

Rock Inas Ghosal & Ors. ..Respondents.

Mr.Rajesh S.Datar with Mr.Akshay J.Kandarkar for the petitioner.

Mr.R.R.Salvi for respondent Nos.1 to 5.

CORAM: M.S.SONAK, J.

DATE : NOVEMBER 21, 2017

PC.:-

Heard Mr.Rajesh Datar for the petitioner and Mr.R.R. Salvi for respondent Nos.1 to 5. Rule. Rule made returnable forthwith.

2. On the request of the learned counsel for the parties, the petition is heard finally.

3. Challenge in this petition is to the order dated October

20, 2016 passed below Exhibit-219 in Special Civil Suit No.669/2007 passed by the learned Civil Judge, S.D. Vasai.

4. The petitioners are the original defendant Nos.1 and 2. There is some controversy as to whether the petitioners have suffered a no written statement order or, whether the petitioners have been permitted to adopt the written statement filed on behalf of defendant Nos.12 to 15. However, in this matter, we are not for the present concerned with this controversy.

5. In the course of cross examination of the plaintiff, the petitioner's cross examination was restricted by the impugned order only to '*law point*'. Further, there is an observation in the impugned order to the effect that a notice to produce the documents was issued to the petitioners, which notice, the petitioners have failed to comply with. In the circumstances, the petitioners will be bound by the consequences of non compliance of the order.

6. In so far as the first portion of the impugned order is

concerned, the same is required to be interfered with. This is because, the right of the petitioners to cross-examine cannot be restricted to 'points on law'. Even assuming that there is no written statement filed by the petitioners, the petitioners are entitled to cross examine on facts particularly because it is not understood as to what sort of cross-examination there can be on 'points of law'.

7. As to the consequences of non compliance of notice to produce documents is concerned, the learned trial Judge is at liberty to take appropriate proceedings under the law. It is not necessary that the learned trial Judge makes a specific order as to what such consequences shall be. However, it is not sufficient to merely say that the consequences of non compliance of the notice to produce documents will have to be faced by the petitioners.

8. For the aforesaid reasons, the impugned order is set aside. Subject to fresh orders which the trial Court may issue in the context of the alleged non-compliance with the notice to produce documents, it is declared that the petitioners cannot be restricted in the cross-examination only to the 'points of laws'.

The trial Judge is at liberty to make appropriate orders on the issue of non-compliance of notice to produce documents after giving opportunity to the parties concerned.

9. Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

All concerned to act on an authenticated copy of this order.

(M.S.SONAK, J.)