

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3536 OF 2017

Narendra Prakashchand Bansal ... Petitioner
Vs.
Ashutosh Mukhyopadhyay ... Respondent

Mr. Ashish Mehta a/w. Mr. Pratik Jhaveri, Advocate for the petitioner.
Mr. Sushil Upadhyay i/b. Mr. Ashok Saraogi, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **7th April, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the Petition is heard finally and disposed of at the stage of admission.

2. The petitioner has filed Summary Suit No. 4390 of 2007 under Order XXXVII of the Code of Civil Procedure and his examination-in-chief and cross is over on 17th June, 2015. At that time, the learned counsel for the plaintiff/petitioner has declined to take reexamination of the plaintiff. However, on 23rd June, 2015 an application is moved by the plaintiff seeking permission to reexamine himself on the ground that new facts are introduced in the cross-examination. The said application was opposed by the defendant/present respondent. The learned trial Court, after considering the submissions of both the

parties, rejected the application, which is marked as Exhibit 24 on the ground that no new fact is introduced and there is no ambiguity. Hence, the said order is under challenge in this Writ Petition.

3. The learned counsel for the petitioner pointed out paragraphs 27 and 28 from the cross-examination of the plaintiff in Summary Suit No. 4390 of 2007 and submitted that the plaintiff was cross-examined on the point of streedhan of his mother, which fact is not pleaded by him as a source of funds out of which he lent money to the defendant. Therefore, according to the plaintiff this is the new point introduced by way of cross-examination as a source of his funds and which is to be explained by way of re-examination. The learned counsel further submitted that the order under challenge was passed on 14th July, 2015 and Writ Petition was filed on 7th March, 2017 and hence there is delay. He submitted that he has explained the reasons for delay in paragraph 24 of his Writ Petition. The learned counsel submitted that in paragraph 24, there was communication gap between earlier advocate and him and, therefore, it was not filed within time.

4. The learned counsel for the respondent/defendant opposed the Application for condonation of delay.

5. In view of the reasons given in paragraph 24 of this Petition, delay is condoned on the condition that cost of Rs.2,000/- is to be paid by the petitioner to the respondent.

6. Perused paragraphs 27 and 28 from the cross-examination of the plaintiff in the Summary Suit and also the impugned order. I am of the view that there is no illegality in the order passed by the learned trial Judge of not allowing the plaintiff to step in for reexamination. However, it is made clear that in paragraph 27, the plaintiff was asked about the availability of the document pertaining to stridhan of his mother and the plaintiff has said that if the document is available, then he would produce to prove the fact of mother's stridhan. Considering this evidence of the plaintiff, if at all such document is produced by the plaintiff on the next date of the hearing of the suit, then plaintiff is free to produce the document/s which the trial Court may allow the same and respondent/defendant is at liberty to take cross-examination in respect of those documents only if the documents are exhibited.

7. Writ Petition is dismissed with above observations.

(MRIDULA BHATKAR, J.)