

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3588 OF 2018
ALONG WITH
WRIT PETITION (ST.) NO. 7520 OF 2018**

- | | | | |
|-----|--|---|--------------------------------|
| 1. | Bipin Jaysukhlal Mehta |] | |
| 2. | Ajitbhai Ramniklal Shah |] | |
| 3. | Nareshbhai Amritlal Shah |] | |
| 4. | Vijaybhai Nagindas Mehta |] | |
| 5. | Pankajbhai Jaisukhlal Mehta |] | |
| 6. | Anilbhai Amrutlal Shah |] | |
| 7. | Anilkumar Shantilal Shah |] | |
| 8. | Kishorbhai Jechandbhai Mehta |] | |
| 9. | Ketanbhai Balvantraai Shah |] | |
| 10. | Hareshbhai Nagindas Vora |] | |
| 11. | Rashminbhai Dahyabhai Shah |] | |
| | All Adults, Indian Inhabitants & |] | |
| | Trustees of Matunga Jain |] | |
| | Shwetambhar Murti Pujak |] | |
| | Tapagachha Sangh and Charities A |] | |
| | Public Charitable Trust, having office |] | |
| | at Brahmanvada, Dr. Ambedkar Road, |] | |
| | Matunga, Mumbai - 400 019 |] | |
| 12. | Matunga Jain Shwember Murti Pujak |] | |
| | Tapagachha Sangh & Charities, Public |] | |
| | Charitable Trust, having its office at |] | |
| | Brahmanvada, Dr. Ambedkar Road, |] | |
| | Matunga, Mumbai - 400 019 |] | |
| | | | <u>... Petitioners.</u> |

... Versus ...

- | | | |
|----|---------------------------------------|---|
| 1. | Jayantibhai Talakchand Shah, |] |
| | Adult, Indian Inhabitant, residing at |] |
| | Woodland Nook, Bhaudaji Road, |] |
| | King Circle, Matunga, |] |
| | Mumbai - 400 019 |] |

2. The Charity Commissioner,]
 Greater Mumbai, a statutory officer]
 appointed under Bombay Public Trust]
 Act, having his office at Dr. Annie]
 Besant Road, Worli, Mumbai] **... Respondents.**

- Ms.Sunanda Kumbhat a/w. Mr.Ramchandani & Mr.R.R. Shah i/b. Mr.Haresh Moti Advani for the Applicants.
- Mr.Shrihari Ane, Senior Counsel a/w. Mr.R.B. Jain, Mr.Ameya Mahajan and Ms.Sneha Pokle i/b. Legal Juris for the Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th APRIL, 2018.

ORAL COMMON JUDGMENT :-

1] Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Ms.Kumbhat, learned Counsel for the Petitioners and Mr.Shrihari Ane, learned Senior Counsel for Respondent No.1.

2] As both these Writ Petitions are arising out of one and same proceeding and are raising the common questions of facts and law, they are being decided by this common judgment.

3] Both these Writ Petitions are preferred by Original Defendant Nos.1 to 12. Writ Petition No.3588 of 2018 is preferred

challenging the order dated 10th January 2018 passed by the City Civil Court, Mumbai, in S.C. Suit No. 3741 of 1998 thereby admitting in evidence the document - a religious scripture by name, “श्रीकल्पसुत्रसुबोधिकाटीकासमलङ्कृतम् ” and marking it as Exhibit-116 during cross-examination of Petitioner's witness, D.W.-1, Ajit Shah and requesting this Court to De-exhibit the same, by setting aside the impugned order to that effect, passed by the trial Court; whereas Writ Petition (St.) No.7520 of 2018 is filed by the Petitioners, calling for the record and proceeding of the trial Court in view of unending, rambling, uncontrolled and unabated cross-examination of D.W.-1 by the Respondent No.1's Advocate, for last four months continuously since 10th November 2017 till 6th March 2018, and for directing that the said cross-examination to be forthwith concluded and thereafter keeping the suit for hearing before the trial Court once in a week.

4] The present Writ Petitions have a chequered history of litigation and it pertains to disputes between the two sects amongst the Jain Community. Respondents/Plaintiffs are having faith in the Navangi Guru Puja and Be-Tithi., whereas Petitioners/Defendants are having faith in Ekangi Guru Puja and Ek-Tithi.

5] The case of the Respondent Nos.1-Original Plaintiff No.1 in

short is that they are the members of Petitioner No.2 the Matunga Jain Shwetamber Murtipujak Tapagachha Sangh and Charities, which is a Public Trust. Petitioner Nos.1 to 11 are the Trustees of Petitioner No.12. It is the case of the Respondent No.1 that though they belong to Jain Community, they believe in a form of puja of living monk known as Navangi Gurupujan and that they follow observance of Be-Tithi. The Trustees, namely, the Petitioners herein, had passed some resolution on 1st July 1998, restraining Jain Monks of Tapagachha Sect from entering in, staying over, giving religious discourses and performing rituals in accordance with Navangi Gurupujan or Be-Tithi, beliefs and observation in the trust property. This resolution, according to Respondents, is illegal, bad in law, null and void. Therefore, they had filed the suit for injunction restraining the Petitioners from obstructing, objecting and interfering with the Respondent No.1/Plaintiffs performing Navangi Guru Puja and observing Be-Tithi in the Trust property and also to restrain the Petitioners from obstructing the Jain monks from entering the Trust property and performing rituals in accordance with Navangi Gurupujan and observance of Be-Tithi beliefs. The specific prayers made in the suit are as follows.

(A) That this Hon'ble Court be pleased to pass an order that the Resolution passed by the Defendants in the Annual

General Meeting dated 1st July 1998 and if any such resolution passed by the board of Trustees in its earlier meetings are illegal, bad in law, null and void, ineffective and inoperative.

(B) That this Hon'ble Court be pleased to pass an order of perpetual injunction restraining the Defendants, their trustees, members, agents, employees, officers and persons claiming through them, from obstructing, objecting, interfering in any manner with the performance of Navangi Gurupujan or observance of Be Tithi by an Jain Shwetamber Murti Poojak Tapagachha Sangh followers in the Trust property.

(C) The Defendants, their trustees, members, their agents, employees officers and persons claiming through them, from obstructing in any manner Jain Monks of Tapagachha Sect from entering in, staying over, giving religious discourses and performing rituals in accordance with Navangi Gurupujan or Be Tithi beliefs and observation in the trust property."

6] It is Respondent No.1's belief that they are entitled to perform Navangi Guru Puja and observe Be-Tithi in the Trust property, which is supported by Jain scriptures.

7] These contentions of Respondent No.1 are denied by the present Petitioners.

8] On the basis of the pleadings, the trial Court has framed necessary issues and some issues were re-casted and additional issues

thereafter were framed as per directions of this Court in Civil Revision Application No.89 of 2003. Issues, which are relevant, for the purpose of deciding these Writ Petitions are issue Nos.7 and 9. They read as follows :-

“Issue No.7 : *Do Defendants Nos.1 to 11 prove that performing Navangi Guru Poojan and observance of Be-Tithi are contrary to Jainism and they can prohibit the Plaintiffs from performing the Navangi Guru Poojan in the Upashray of the Trust and observation of Be-Tithi as the Trust of (Defendant No.12) in only for the persons having faith in Ekangi Guru Poojan and observing Ek-Tithi?*

Issue No.9 : *Do the Plaintiff proves that concept of the “Be Tithi” and “Navangi Guru Pujan” are known to the Jain worship of Tapagacha sect and are observed and performed by members of Tapagacha sect as stated in paragraph Nos. 3A, 3A(1) and 3A(V) of the plaint?”*

9] Pursuant to framing of additional issues, the Respondent No.1 has filed the affidavit of further examination-in-chief of P.W.-1 along with list of documents from Serial Nos.1 to 126 on or about 13th December 2004. The Petitioners filed written objections thereto. The trial Court has, vide order dated 12th January 2005, admitted in evidence 115 documents produced by P.W.-1 and they are marked as Exhibits. The Petitioners preferred Writ Petition No.1902 of 2005

against the said order dated 12th January 2005. The matter was then referred to the Division Bench. Meanwhile, by the interim order dated 6th July 2005, the direction was given to the Respondents to proceed to examine other witnesses, after which the suit shall stand stayed until further orders. The Division Bench of this Court by judgment dated 16th October 2008 answered the questions which in effect meant that the documents produced by P.W.-1 be considered individually and directed that the matter be placed for disposal in accordance with law.

10] In the meantime, Respondent No.1 had examined certain witnesses and closed the evidence on 17th April 2009. However, immediately after the judgment of the Division Bench in Writ Petition No.1902 of 2005 on 16th October 2008, Respondent No.1 made an application dated 1st September 2009 for withdrawal of additional affidavit for further examination-in-chief of P.W.-1 dated 13th December 2004, which application was marked as Exhibit-41. By the order dated 9th September 2009, the trial Court held the affidavit of examination-in-chief dated 13th December 2004 of Plaintiff No.1 to be discarded. The said order was challenged in Writ Petition No. 9696 of 2009 and the same was admitted on 1st February 2010. Thereafter, the Respondent No.1 made Civil Application No.2263 of 2012 in Writ Petition No. 1902 of 2005 and the same was disposed of by order

dated 11th September 2012, whereby the trial Court was directed to *de-novo* consider the issue regarding admissibility of the documents. Then, on 13th December 2014, the Respondent No.1 filed an application for withdrawing the application at Exhibit-41 and for examining P.W.-1 on commission, which was rejected by the trial Court on 21st February 2015. The said order was challenged by Respondent No.1 in this Court. Meanwhile, Respondent No.1 also amended the suit on 6th January 2016 and brought on record new Trustee, namely, Mr.Paresh S. Madkaikar. An attempt was also made to explore the possibility of settlement but it was not successful.

11] At the instance of Respondents/Plaintiffs the matter also reached to the Principal Judge, City Civil Court, who by his order dated 9th February 2017, expedited the hearing of the suit and directed the trial Court to keep the matter once a week and make progress. Petitioners challenged the said order by preferring Writ Petition No.7342 of 2017 wherein this Court has, by the order dated 3rd July 2017, directed the trial Court to take up the hearing of the suit on day-to-day basis. At the same time this Court also observed that, "it is always better for the parties to mediate on such issues.". In Civil Application No.2529 of 2017 in Writ Petition No.7342 of 2017 filed by the Petitioners, this Court, vide its order dated 7th November 2017

directed the Petitioners to file their evidence and the trial Court was once again directed to take up the matter on day-to-day basis.

12] Pursuant to these orders passed by this Court, the Petitioners filed the Affidavit of examination-in-chief of their first witness D.W.-1 Shri Ajit Shah on 10th November 2017. Since then, the matter is taken up on day-to-day basis by the trial Court and the cross-examination of D.W.-1 is being recorded, which is still in progress.

13] During the course of cross-examination of D.W.-1 - Ajit Shah, learned counsel for the Respondent No.1 has, according to the Petitioners, tried to exhibit the various documents like Shastras and Granthas, which are having absolutely no connection with the suit, thereby prolonging and protracting, not only hearing of the suit but also causing severe mental harassment to the witness himself.

14] As a part of this cross-examination, on 10th January 2018, the witness was confronted with the religious scripture (Grantha) by name “श्रीकल्पसुत्रसुबोधिकाटीकासमलङ्कृतम् ” which came to be exhibited and marked as Exhibit-116 by the trial Court, vide its impugned order, despite the objections raised by learned counsel for the Petitioners. Hence, being aggrieved thereby, Writ Petition No.3588 of 2018 is preferred.

15] It is submitted that the Petitioners had objected to exhibit the said document on multiple grounds viz. D.W.-1 is not the author of the said document; it is in Sanskrit language and running in more than 500 pages; D.W.-1 does not understand Sanskrit language; the authenticity of the document, which was in the form of loose unsigned sheets is itself under the cloud. It was submitted that the said document was published in year 2009 that is after the date of filing of the above suit in the year 1998. Moreover, Respondent No.1 could have proved this document through their own witness but instead of doing that Respondents were trying to get the said document proved through the evidence of Petitioner's witness, which was not at all proper.

16] All these submissions were resisted by learned counsel for Respondent No.1, contending *inter-alia* that the objection to the exhibition of this scripture cannot be taken, as several such scriptures are already marked as exhibits through the cross-examination of P.W.-1, namely, Jayantibhai Talakchand Shah. At that time Respondents have not raised any objections. The Granthas which are exhibited during cross-examination of P.W.-1 are Dahrshan Shuddhi Prakaran (Exhibit-12), Panchkalpa Bhashyachurni (Exhibit-11), Paryushan

Mahapravachan (Exhibit-13), Chaityavandanam Bhashataram (Exhibit-17), Yogibindu Granth (Exhibit-18), Prashnapaddhati Granth (Exhibit-20). It is submitted that these documents were put up to Respondent No.1/Plaintiffs' witness by the Petitioners' counsel and though these documents were also in the loose form and in Sanskrit language, they were marked as exhibits. In view thereof, the Petitioners are now estopped from raising these objections. Further it is submitted that the said Grantha was originally written in the year 1640 and not in the year 2009. Its Hindi translation is already produced on record and marked as Exhibit-126. Learned counsel for the Respondents had then relied upon the relevant portions of the cross-examination of this witness to show how this Grantha is relevant for decision of this suit.

17] According to learned counsel for the Petitioners, however, when those documents were exhibited through cross-examination of PW-1, at that time the Respondent No.1 has not taken any objection and therefore, those documents went unchallenged on record and now when the objection is raised, the admissibility and evidentiary value of such document needs to be taken up for consideration on the touchstone of law.

18] As the trial Court has, despite such objections, exhibited the said document called as “Tikka” on Kalpasutra, through the evidence of D.W.-1, the present Writ Petition is preferred challenging the impugned order of the trial Court.

19] The submission of learned counsel for the Petitioners, while challenging the impugned order of the trial Court is that, the said order is perverse, illegal and passed without following the requisite procedure, laid down in the judgments of the Hon'ble Apex Court and this Court for proving the validity, admissibility and legality of such documents. It is submitted that, only the front page of the document was shown to the witness, without giving him an opportunity to go through the document. Moreover, when the witness is not having any knowledge of the Sanskrit language, in which that document is written and he is also not the author of the said document; the trial Court should not have marked such document. Thus, according to learned counsel for the Petitioners, the trial Court has committed a grave error in marking this document as exhibit and hence, the impugned order of the trial Court needs to be quashed and set-aside.

20] Per contra, learned counsel for Respondent No.1/Plaintiffs

has supported the impugned order passed by the trial Court of exhibiting the said document by submitting that the trial Court has given valid reasons as to why the admissibility of this document and its exhibit was essential for decision of the suit. It is submitted that the admission of this document in evidence and it being a part of record will assist the Court itself to arrive at its proper decision. Therefore, no fault can be found in the impugned order passed by the trial Court.

21] Learned counsel for the Petitioners has, in support of her submissions relied upon the Judgment of the Full Bench of this Court in the case of *Hemendra Rasiklal Ghia V/s. Subodh Mody, 2008(6) All MR 352*, which pertains to the question as to when the objection to the admissibility of the document in evidence is required to be decided; whether it should be decided as and when it is raised or to be kept till the judgment in case is given and it was held that ordinarily objections as to admissibility of the document is to be taken before it is exhibited and normally it should be decided at that stage itself. Therefore, in my considered opinion, strictly speaking, this Judgment may not be useful for the decision of this Writ Petition, as, in this case, the trial Court has already considered and decided the objection to admissibility of this document. In the said Judgment, two questions

were framed for consideration by the Full Bench of this Court. They are as follows:

“Question (A) : At which stage, the objection to the admissibility and/or proof of document which may be produced or tendered should be raised; considered and decided by the Court?”

Question (B) : At which stage, an objection to the admissibility or relevancy of evidence contained in the affidavit filed under Order XVIII, Rule 4 of C.P.C. should be considered and decided by the Court?”

22] For the purpose of this case, question No.(A) can be relevant at the most. While giving answer to the said question in paragraph No.92, the Full Bench of this Court was pleased to observe as follows:

“As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is

inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.

The Court trying the suit or proceedings as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove. As we have already added a word of caution that while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The aim should always be to prevent miscarriage of justice and expedite trial, which is the dire need of the time.”

23] In the present case, the document which is sought to be exhibited, does not fall in the category (i) nor in category (iii). Therefore, at the most, one may say, it falls in category (ii) that the objection relating to proof of document, of which admissibility is not in dispute must be taken and judicially determined, when it is marked as exhibit, which the trial Court has done in this case. In this case, the trial Court has considered the objection and determined it judicially. Therefore, this judgment of the Full Bench cannot be of any help to the Petitioners.

24] Learned counsel for the Petitioners has then relied upon the judgments of this Court in the case of *Laxmikant S. Lotlekar & Another V/s. Raghuvir S. Lotlekar & Anr.*, 1984 Mh.L.J. 938, which is followed in the case of *Vijayyak M. Dessai V/s. Ulhas N. Naik & Anr.*, 2017 DGLS (Bom) 927, especially to the observations made in paragraph Nos.5 and 6 of the said judgment, to submit that the documents which can be introduced in evidence by way of cross-examination are only those which are meant to refresh the memory of the witness and not to prove some new documents, which are meant to prove the original case of the party. Otherwise the other party may not get a fair opportunity to meet the cause of his adversary, being taken by surprise. Here, in the case, it is submitted that the documents which are sought to be proved through the cross-examination of the Petitioner's witness, were required to be proved by the Respondent No.1 through the evidence of their witness and not through the cross-examination of the Petitioner's witness.

25] However, in my considered opinion, in this case, there is no question of Petitioners being taken by surprise, as Petitioners themselves have produced on record the document of "Kalpsutra". Hence, this judgment also cannot be of much assistance to the Petitioners to advance their case.

26] Per contra, learned counsel for the Respondent No.1/Plaintiffs has relied upon the judgment in the case of *Sardar Dayalsing Charansing V/s. Tulsidas Tarachand*, AIR (32) 1945 Sind 177, wherein in similar matter, while deciding the question relating to the practices and beliefs in Sikh religion, the documents, in the nature of religious scriptures (Granthas) were referred to in argument and in the authorities cited by the learned Advocates and it was held that the Court is entitled to refer to these documents under Section 57 of the Evidence Act, 1872, as these documents were found to be of assistance to the Court; in order to go in to the history and theological beliefs of that religion.

27] Here, in the case also, in my considered opinion, as rightly submitted by learned Senior Counsel for the Respondent No.1, the real issue and controversy between the parties is the practices and the religious beliefs, which are followed by these two sects of Jain religion. The practices of one sect are followed by the Petitioners and of another sect by the Respondent/Plaintiffs. Now it will be for the trial Court to decide which of these practices or beliefs are to be upheld and for that purpose the production of these Granthas, which deal with those practices and beliefs will be definitely useful. They will be useful not only to the Court but also to both the parties to the suit in placing their

respective case before the trial Court effectively. The production and admission in evidence of these Granthas/the documents, some of which are already exhibited, is thus necessary having regard to the disputed questions of facts involved in this case.

28] It is also a matter of record that in the cross-examination of Respondent's witness several such Granthas marked as Exhibit-11, 12, 13, 17, 18 and 20, which as stated above, are already exhibited and they will be taken in to consideration by the Court. Now these are some of the Granthas, on which Respondents are relying and therefore, if those Granthas, which may be giving some version contrary to the version given by the Respondents, are also brought on record, it will be definitely necessary to admit in evidence these Granthas also. They will be helpful to the trial Court also in arriving at its proper conclusion.

29] It is pertinent to note that the Granthas from Exhibit-12 to 20, namely, "*Panchkalpa Bhashyachurni, Paryushan Mahappravachan, Chaityavandanam Bhashataram, Yogibindu Granth and Prashnapaddhati Granth*" produced by the Petitioners are already exhibited. Merely because the Respondents had not taken objection at that time, does not mean that as now Petitioners have taken the

objection, therefore these Granthas should not be exhibited. The trial Court has, while passing its impugned order, categorically observed that, considering the nature of relief based on the pleadings and the issues framed along with the facts in issue, it was of the view that the Granthas and Shastras are helpful to the Court to give findings on issues, which have been framed on record. It was observed by the trial Court that the answer to these issues which are framed for its consideration are present in the Granthas. Moreover, when D.W. No.1 Mr.Ajit Shah himself has admitted that it was a “Shastriya Bath”, thereby meaning that it pertains to the Granthas, then they are definitely helpful in adjudication. The trial Court has also held that in respect of the knowledge of the witness, it is necessary to give an opportunity to the Advocate for the Respondents to tender the Grantha and ask questions to the witness about it. Without asking any question, it would not be proper to jump to any conclusion. Witness is admittedly a person from the same community and religion. He is also having special knowledge of this Grantha/Granthas.

30] Thus, the trial Court has, after having regard to the objection raised by learned counsel for the Petitioners that the witness does not understand the Sanskrit language, held that the document can be referred and confronted to the witness. It was for the witness to

say about admissibility of it and admissibility could be decided accordingly.

31] As stated above, it is also to be taken note of that even in the list of documents which are part of Schedule-I and relied upon by the Petitioners, there is reference to this document - “Kalpasutra” at Serial No.24. Therefore, this document is not something new or irrelevant, which is sought to be produced by way of evidence.

32] In considered opinion of this Court, it is for the trial Court, which has an opportunity to go through the pleadings, frame issues and thereafter record the evidence of the witnesses, to know and decide whether the said document will be essential for adjudication of the issues framed by it. This document admittedly cannot be called as totally “irrelevant” or completely in-admissible, on any of the grounds, like insufficient stamp or otherwise. The document is relevant and ultimately what evidentiary value to be given to this document, will be considered by the trial Court, only at the time of final hearing, after having regard to the entire evidence on record, including the cross-examination of this witness to the fact that he does not understand the Sanskrit language, the fact that he is not the author of the said document, the document is in loose sheets and not signed by the

witness. All these aspects will be considered by the trial Court at the time of final hearing, only after at this stage this document is admitted in evidence. At this stage, it cannot be said that the documents like these Granthas are, for the decision of this suit, totally irrelevant or inadmissible in evidence and therefore, the trial Court should not have admitted the same in evidence or the trial Court has committed an error in rejecting the objection raised by learned counsel for the Petitioners. This is too premature a stage to contend that this document be de-exhibited.

33] Once it is held that the document is essential and will be helpful to the trial Court also in arriving at its proper conclusion for proper adjudication of the case, then it follows that such document cannot be de-exhibited at this stage. However, again at the costs of repetition, this Court is reiterating that, so far as evidentiary value of this document, the trial Court will be considering the same at the proper stage after having regard to the entirety of the facts and evidence before it. Otherwise also, for its own adjudication, the trial Court would have to rely upon this Grantha as it ultimately pertains to the “Shastriya Bath” or what is called as a matter of religious beliefs, faiths and practices. Therefore, keeping in mind the larger picture also, it cannot be said that the trial Court has committed any

irregularity or error, much less illegality, so as to warrant interference in the impugned order of the trial Court, in writ jurisdiction, the scope of which is very limited, only to ensure that the trial Court has acted within its jurisdiction. No jurisdictional error is pointed out in the impugned order passed by the trial Court. Therefore, so far as the Writ Petition No.3258 of 2018 is concerned, it needs to be dismissed and, accordingly, stands dismissed.

Writ Petition (Stamp) No.7520 of 2018

34] In second Writ Petition (St.) No.7520 of 2018, it is submitted that, if this type of cross-examination of the Petitioner's witness goes on for months together, and that too, on day-to-day basis, then some steps are required to be taken by this Court to curtail this unending cross-examination, which is going on for more than four months continuously and therefore, resulting into mis-carriage of justice. It is submitted that several irrelevant questions, some times even pertaining to the personal details of the witness, relating to the privileged communication and opinion of the witness on various issues are asked for. These questions are at times offensive and insulting his religious feelings and transgressing all forms of decency. At times these questions are harassing and intimidating to the witness. The various instances of those questions are quoted in the Writ Petition to

show how the cross-examination of the witness needs to be stopped forthwith. It is submitted that, this day-to-day ordeal of facing the cross-examination is taking a toll on the health and business of the witness also. Hence, instead of keeping the matter on day-to-day basis, this Court should at least place it for weekly hearing.

35] Per contra, it is submitted by learned Senior Counsel for the Respondents that, the suit is of the year 1998 and this Court has directed the trial Court to decide the suit expeditiously by keeping its hearing on day-to-day basis. Despite that, the hearing of the suit cannot be concluded. It is submitted that, if the witness is giving evasive replies, to bring out the truth, his intensive cross-examination is necessary. There is no intention to harass or to offend him. Moreover, according to learned Senior Counsel for Respondent No.1, it will be the prerogative of the trial Court to control the cross-examination and this Court cannot direct the cross-examination to be curtailed or closed. According to him, the relief, which is claimed in the second Writ Petition is therefore, absolutely not tenable.

36] In my considered opinion also, even a cursory glance to the prayers sought in this Writ Petition is sufficient to hold that this Court cannot entertain the said prayers. When the trial Court is seized of the matter, this Court cannot direct the trial Court to conclude

forthwith the cross-examination of D.W.-1. Moreover, hearing of the case is kept by this Court itself on day-to-day basis. Hence, it would not be proper at all, having regard to the fact that the Suit is of the year 1998, to modify the said order and to keep it on weekly basis, especially when prayer to that effect was already made, in Civil Application No.2529 of 2017 in Writ Petition No.7342 of 2017 which came to be rejected by this Court vide order dated 7th November 2017.

37] As to the lengthy cross-examination of the Petitioner's witness, being conducted on behalf of the Respondents, it may be true that the trial Court cannot be a mute spectator if the cross-examination goes on unending and rambling. The trial Court is required to evince keen interest in the same on its part and to exercise effective control over the same and I am sure that the trial Court is doing the same and will do the same.

38] However, in my considered opinion, it is the duty of both the parties and their Advocates also to ensure that the cross-examination does not become a tool for harassment for the witness. If learned counsel for the Petitioners keeps on raising objection to each and every question asked to the witness, the cross-examination is never likely to be completed. The very observations made by the trial

Court in its impugned order are eloquent to show how the valuable and precious time of the trial Court was 'consumed', which this Court will call as 'wasted' in deciding the objections and suggestions. In higher judiciary, we often talk of the trial Court exercising effective control over the proceeding and in recording of the evidence but in the considered opinion of this Court, however, it is high time that the parties and their Advocates handle such proceeding with more maturity and exercise due restraint, both in asking the questions to the witness and in raising objections thereto. Otherwise this is a malady which trial Judge alone cannot remedy. The very nature and number of the questions, with which the witness is confronted, some pertaining to his personal details, some relating to privileged communication, some on the verge of hurting the religious feelings or insulting or harassing him, leaves much to be desired. Objections to some of these questions are bound to be raised. Then the Court's time, which is already consumed day-to-day in this proceeding only, is wasted in deciding these objections. It is apart that, the witness is harassed, mentally tortured and hence, deter from coming to the Court, therefore, the matter being adjourned.

39] It is pertinent to note that, in this case, hearing of the suit is made time bound by this Court on 2nd May 2000 and by the Hon'ble

Supreme Court on 4th August 2000 and directed to be concluded within six months and since then from time to time, extension is granted as the hearing of the suit could not be completed during this period of 18 years therefrom and 20 years from the filing of the suit. Even after the hearing was made time bound, as per the affidavit of the Respondent, on 15 occasions the Petitioners took the adjournment on one count or the other and filed 58 objections as per the list Exhibit-H. Prior to these two Writ Petitions, the Petitioners have till now filed 17 proceedings in this Court, list of which is attached at "G". At one stage, on 12th February 2018, the trial Court was also constrained to observe that, "it seems to me that there is substance in the say that the Defendants are interested to delay the proceedings." The Petitioners have also not stopped from making as many as four transfer applications against the different trial Court Judges, the list of which is attached at "J" to the affidavit in reply filed by the Respondents.

40] As a matter of fact, this Court was also in its order dated 8th May 2000 passed in Appeal from Order No.840 of 1999 constrained to observe that,

“It appears that unfortunately the Defendants have made it a prestige point out of their ego and are therefore litigating on each and every small point at every stage upto the Hon’ble Supreme Court, though technically they are entitled to do so.”

41] Just as the Respondents have given the list and details of the causes on account of which hearing of the suit is delayed, the Petitioners have also given the details of the causes on account of which Respondents have delayed and protracted the hearing of the suit. It is submitted that the Respondent-Plaintiffs have commenced the evidence in the year 2001 but taken almost 15 years to close the evidence on 12th April 2016. The evidence of Plaintiffs runs into 124 pages, commenced from 21st July 2001 and continued till 15th April 2002. Thereafter, further affidavit-in-chief of P.W.-1 was filed on 13th December 2004. Thereafter, 5 years, Plaintiff filed application at Exhibit-41 for withdrawal of the said further affidavit in evidence, on 1st September 2009. Thereafter again on 11th September 2012, Respondents decided to press for further affidavit in examination in chief of Plaintiffs and after two years on 13th December 2014 applied to the Court for examining Plaintiff No.1 on commission. Plaintiff No.2 was dropped from proceeding on 2nd September 2004. However, his name was deleted after 12 years on 12th April 2016. Plaintiff No.1

expired on 5th April 2015. However, pursis to that effect was filed in the suit only on 18th March 2016. The evidence of P.W.-2 and 3 was recorded and even their cross-examination took place. Thereafter, Respondent chose to make an application to discard their evidence. Totally 5 sets of draft issues were submitted latest on 2nd August 2016. Several affidavits, notices to admit documents and lists of witnesses were filed, including number of Chamber Summons, multiple amendments in the plaint. It is submitted that Respondents have also taken adjournments for 11 dates after the order dated 10th November 2017. Thus, it is submitted that it is the Respondents who are equally responsible, if not more, for delay in hearing of the suit.

42] In my considered opinion, it is futile to decide who is more responsible for the delay by entering into a blame-game, because the fact remains that both the parties cannot absolve themselves from the guilt or one may call it even a 'sin', of not allowing the matter to be concluded even at the trial stage and are consuming valuable resources and the precious time of the court, in only one proceeding, when thousands of such proceedings are in line waiting for justice for years together before the trial Court.

43] In my considered view, it is a matter of introspection and reflection for each and every one involved in this litigation, mainly the parties to the litigation and the Advocates representing them. If this sort of affairs go on, it will affect the credibility of not only the legal professionals but of the Judicial institution as such. When judiciary is facing the mountain of arrears of cases and is everyday flooded with avalanche of cases, each and every second of judicial time is precious, which needs to be devoted to advance the cause of substantive justice and not to scuttle its course. Therefore with a sanguine hope and robust belief, this Court leaves the matter hoping against hope that the good sense will prevail on everyone.

44] No further directions in this respect are required. Therefore, this Writ Petition (St.) No. 7520 of 2018 also stands dismissed.

45] Rule discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]