

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2290 OF 2018**

Vimal Bhaskar Deo and ors	...	Petitioner
V/s.		
Pen Municipal Council and ors	...	Respondents

Mr. Vaijanath P.Vaze, for the Petitioner.
Mr. Rohit D. Joshi, for the Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11TH APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondent.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 7th December, 2017, passed by 2nd Joint Civil Judge, Senior Division, Alibag in R.C.S.NOO.270 of 2012, below exh.201.

3] Application at Exh,.201 was filed by the defendant No.2, who is respondent in this petition, for recalling plaintiff's witness Chandrashekhar Dev, for the purpose of cross examination, only in respect of the issue of limitation which was framed subsequently after his evidence was over.

4] The trial Court, vide its order, allowed the said application.

The grievance of learned counsel for the petitioner is that the burden to prove that the suit is not within limitation was on the defendant and hence, he must examine himself. Without that, he cannot call the plaintiff's witness for cross examination. To substantiate his submission, learned counsel for the petitioner has relied upon the judgment of Apex Court in the case of *Nagar Palika, Raisinghnagar -vs- Rameshwar lal and anr (2017) 9 SCC 618*]; wherein it is held that the burden of proof as regards issue of limitation to prove that the suit is not within the limitation is on the defendant. However, in this respect, it has to be stated that the defendant can discharge the said burden of proof by cross examining plaintiff's witness, as it can be one of the modes to discharge the burden, especially here in the case, the issue of limitation was framed after the evidence of plaintiff was recorded. Thus, the defendant needs to be given an opportunity to cross examine plaintiff's witness and the trial Court has rightly restricted the cross examination only in respect of point of limitation. I do not find that the trial Court has committed any error in allowing such application.

5] The Writ Petition being without any merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]