

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

WRIT PETITION NO.13410 OF 2017

Dr.Shekhar M. Karnawat

... Petitioner

Vs.

Shri Madhav Govind Kaulgud

... Respondent

Mr.N.S. Karnavat for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 28, 2018**

P.C. :

1. None appears for the Respondent. Learned Counsel for the petitioner submits that the respondent is served and he has filed an affidavit of service. In the order dated 26.4.2018, notice was directed to be served on the new address of the respondent and it was made returnable on 27.6.2018. The learned Counsel points out that in the affidavit of service dated 24.4.2018, in para 5, he has specifically stated that he has sent the envelope with the notice dated 19.3.2018 to the respondent at his new address. It shows that it has been delivered to him on 24.3.2018. Hence, the Writ Petition is taken up for hearing.

2. This Writ Petition is directed against the orders dated 19.8.2017 below exhibits 119 and 120 in Special Civil Suit No.94 of 2008. The respondent is the original plaintiff, who has filed money recovery suit against some of the defendants. Defendant No.1 is the medical institute and the other defendants are the office bearers of the said institute. Defendant No.5 is the petitioner. The evidence of the plaintiff was recorded and the plaintiff claims the amount on the basis of one agreement executed between the parties and marked exhibit 66 in the affidavit of evidence. The plaintiff has said that the said document was brought by one Dr.R.S.Gulvani, who was an office bearer of defendant No.1. Now, Mr.Gulwani is no more. The plaintiff has stated in the affidavit of examination in chief that the said agreement was in the handwriting of one Vishal Kale as he was informed. He was not cross examined on this point and he has admitted that it was written by Vishal Kale. After his cross-examination, he led evidence of two witnesses. It is the case of the respondent/plaintiff that thereafter, on enquiry with Vishal Kale, he found that the agreement at exhibit 66 was not in the hand-writing of Vishal Kale but in the name of one Prashant Chougule and, therefore, earlier,

he moved one application that Prashant Chougule is to be called as a witness. The said application at exhibit 112 was rejected by the trial Court on 4.1.2017 and the said order was not challenged. Subsequently, the plaintiff moved two applications i.e., exhibits 119 and 120. By exhibit 119, he reiterated his prayer of calling Prashant Chougule. The learned Judge after hearing the parties, allowed the said application and the said order, which was passed on the same date i.e., on 19.8.2017 on exhibit 120 wherein the plaintiff prayed that he be allowed to file further affidavit in chief, is challenged before this Court. As both the applications were allowed, defendant No.5, the petitioner, filed this petition.

3. The learned Counsel for the petitioner/defendant No.5 has submitted that the plaintiff is cross-examined and, therefore, he is not to be allowed to give further affidavit in chief. It is against the procedural law. He has further submitted that initially, his application which was for issuing witness summons to Prashant Chougule and examining the said witness, was rejected. The trial Court ought not to have reviewed its own order and called Prashant Chougule and allowed the application to issue witness summons to Prashant Chougule. The learned Counsel has

submitted that this application will dilute the effect of the cross-examination and the evidence and the plaintiff is trying to fill up the lacunae in the evidence of his examination in chief.

4. Heard the learned Counsel at length. Considered the record, the applications and impugned orders. Though once the Court has rejected the application for issuing of witness summons, the Court may review its own order and allow the application for issuance of witness summons to the same person if the Court, after considering the evidence before it, forms an opinion that it is necessary that the evidence should come before it to ascertain the truth. Same is the criterion for allowing further examination in chief of the plaintiff. However, it entirely depends on the facts of the case and also the nature of the further evidence which the plaintiff or the party seeks. The Court has power under Order 18 Rule 17 and also inherent power u/s 151 of the Civil Procedure Code to call witness for evidence for better adjudication of the issues and the facts and evaluation of the facts. Hence, both the orders passed by the trial Judge are not illegal.

5. There is no need to interfere with the same. Accordingly, the petition is dismissed. However, it is made clear that the plaintiff

should file a very short affidavit in chief in respect of change of name and as to who was the scribe of exhibit 66. No other facts are to be inserted in the affidavit in chief. He can be directed to substitute the affidavit in chief in place of further affidavit in chief which is filed by him. The defendants will be allowed to cross-examine only to that limited point.

6. With the above directions, the Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)