

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

WRIT PETITION NO. 13408 OF 2017

The Cotton Corporation of India Limited	...	Petitioner
V/s.		
Phoenix Mills Limited	...	Respondent

- Mr.Uday M. Mahajan a/w. Mr.Sahil Dabke i/b. M/s.Divekar & Co. for the Petitioner.
- Mr.Sharan Jagtiani a/w. Huzefa Nasikwala & Freddy Daruwala i/b. Nasikwala Law Office for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondent.

2] By this petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 16th September, 2017 passed by the City Civil Court, Mumbai thereby allowing the Notice of Motion No.2699 of 2017 filed by the Respondent-Defendant for recalling the Plaintiff's witness for further cross-examination. The ground given for recall of the witness was the change of Advocate and

for clarifying of certain facts.

3] Learned counsel for the Petitioner strongly takes objection to this order by submitting that the change of Advocate cannot be a ground for recalling the witness; especially when it is not at all clarified in the impugned order on which particular aspect, the witness is to be recalled for further cross-examination.

4] At this stage, learned counsel for the Respondent points out to the Affidavit-in-Rejoinder filed before the trial Court and submits that, only in respect of the portion in paragraph No.6 from “Further, the Plaintiff is unable to explain” till “...have not been cross examined” and in respect of the contents stated in paragraph No.7, the Respondent wants to recall the Plaintiff's witness for further cross-examination.

5] In view thereof, as the scope of further cross-examination is now restricted, in order to decide all the controversies involved between the parties effectively, properly and finally; the impugned order passed by the trial Court needs to be maintained subject to modification that the recall of the Plaintiff's witness for further cross-examination will be restricted only to the above said portion in

paragraph 6 and the contents of paragraph 7 of the Affidavit-in-Rejoinder filed by the Respondent.

6] At this stage, learned counsel for the Respondent submits that as the witness who is to be recalled for cross-examination is 82 years old, he may not be able to remain present immediately and hence, time of four weeks be granted. Ordered accordingly.

7] Accordingly, the Writ Petition is disposed of with the direction that the cross-examination of the Petitioner's witness will be restricted only to the portion marked as above, in paragraph No.6 and the contents of paragraph No.7 of the Affidavit-in-Rejoinder.

8] The time of four weeks is granted for the witness to remain present before the trial Court with a specific understanding that the cross-examination of the witness will be completed on that day itself and no adjournment will be sought by the Respondents.

9] Learned counsel for both the parties submits that the date fixed before the trial Court is day after tomorrow on 10th January, 2018. Hence, both the parties are directed to inform the trial Court about this order.

10] The concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]