

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO.538 OF 2019

**RUKHMANIBAI BHIKAN SURADKAR CHAUDHARI AND ANOTHER  
VERSUS  
SINDUBAI KARBHARI MAHAPURE**

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Advocate for the Petitioners : Shri Chaudhari Deepak D.

Advocate for the Respondent : Shri Thole Vinod I.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 13<sup>th</sup> November, 2019**

**Per Court:**

1                    On 15.01.2019, this Court (Coram : Sunil P. Deshmukh, J.)  
has passed the following order :-

- "1.    Issue notice to respondents returnable on 12-02-2019.
2.    Petitioners to deposit amount of Rs.10,000/- to show bonafides. Amount to be deposited in trial court within a period of two weeks from today.
3.    Till returnable date, further proceedings in special civil suit bearing no. 315 of 2015 pending before civil judge, senior division, Aurangabad may remain in abeyance.
4.    In addition to service through court process, petitioner shall serve respondent by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect by returnable date.
5.    In case of failure to deposit the amount and serve respondent privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would automatically cease to operate."

2                    The petitioners are the original defendants in Special Civil

Suit No.315/2015. They are aggrieved by the order dated 01.01.2019 passed by the Trial Court vide which, the application exhibit 49 filed by the petitioners invoking Section 151 r/w Order 18 Rule 17 of the Code of Civil Procedure for recalling of the plaintiff witness no.1 (PW-1) for further cross-examination, has been rejected.

3           I have heard the learned advocates for the respective sides. The learned advocate for the respondent/ original plaintiff has strenuously opposed this petition. He submits that the petitioners intend to delay the proceedings so as to tire out the plaintiff, who is a lady litigant. For two years, the cross-examination was not conducted and after PW-1 was extensively cross-examined on 06.12.2018, exhibit-49 has been filed on 15.12.2018. The only reason mentioned in the application is that certain documents were not touched in the cross-examination. Per-contra, all documents mentioned in exhibit 49 have been specifically dealt with by the petitioners in the cross-examination of the said witness as is evident from paragraphs 13 to 15 of the cross-examination below exhibit 31.

4           I find that the petitioners have preferred exhibit 49 claiming to have forgotten to cross-examine PW-1 on the documents, which are mentioned date-wise in exhibit 49. I have perused exhibit 31, which reflects the cross-examination conducted by the learned advocate for the defendants. Questions have indeed been asked insofar as the documents dated 08.04.1981, 26.11.1981, 14.06.1986 and 05.05.1987. The learned

advocate for the petitioners submits that certain questions as regards the signatures appearing on these documents have to be posed. I find that barring two documents viz. sale deeds dated 08.04.1981 and 26.11.1981, questions as regards the signatures appearing on the other documents have already been posed.

5            Though exhibit 49 has skeletal pleadings, in order to avoid a deficiency being left over in the trial of the suit, I am entertaining this writ petition to the extent of permitting the petitioners to cross-examine PW-1 only with regard to the signatures appearing on the two sale deeds dated 08.04.1981 and 26.11.1981. No questions would be posed with regard to the other documents set out in exhibit 49.

6            In view of the above, this Writ Petition is partly allowed. The impugned order dated 01.01.2019 stands modified and exhibit 49 stands partly allowed to permit the petitioners/ defendants to cross-examine PW-1 only to the extent of the signatures appearing in the sale deeds dated 08.04.1981 and 26.11.1981.

7            By the consent of the parties, Special Civil Suit No.315/2015 shall be taken on the board before the Trial Court on 02.12.2019. The respondent/ plaintiff (PW-1) shall remain present on 02.12.2019 before the Trial Court and the petitioners/ defendants would further cross-examine her only with regard to the signatures appearing on the two sale deeds as mentioned above. No other question would be posed or shall be

permitted by the Trial Court. No adjournment shall be granted.

8           The petitioners/ defendants shall deposit an additional amount of Rs.5000/- (Rupees Five Thousand) before the Trial Court on or before 02.12.2019. The respondent/ plaintiff shall withdraw the entire amount inclusive of the amount of Rs.10,000/- (Rupees Ten Thousand) deposited earlier, with accrued interest, without conditions. Disobedience of any of the above conditions, shall permit the Trial Court to discharge the plaintiff on 02.12.2019.

*kps*

**(RAVINDRA V. GHUGE, J.)**