

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

78 WRIT PETITION NO.3950 OF 2019

SHARAD SADASHIV SUDKE AND OTHERS
VERSUS
MARK CONSTRUCTION THROUGH OWNER MARKAND
MADHAV KULKARNI

...
Advocate for Petitioners : Mr. B.S. Shinde h/f Mr. V.P.
Latange
...

CORAM : P.R. BORA, J.
DATED : 25th March, 2019.

PER COURT:-

. Heard Shri Shinde, the learned counsel appearing for the petitioners.

2. Perused the impugned order.

3. The application was filed by the present petitioners seeking permission to cross-examine the witness which was called at the instance of the petitioners. It is the contention of the learned counsel appearing for the petitioners that the witness was not properly giving answers to the questions which were put to him. The learned counsel invited my attention to Section 154 of the Evidence Act to urge that in the present case, the petitioners must have been permitted to cross-examine the witness. The

learned counsel has relied upon the judgment of the division bench in the case of **"Radhyesham Ramkisan Chandak and another Vs. State of Maharashtra, 1995 (1) Mh.L.J. 741"**.

4. On perusal of the impugned order it apparently does not appear to me that the learned Trial Court has committed any error in rejecting the request of the petitioners, who are the defendants in civil suit before the Trial Court to cross-examine their own witness namely Jitendra Shankar Bhingardive. I deem it appropriate to reproduce here-in-below the observations made by the learned Trial Judge in para-7 of the impugned order which read thus:

"7. A party will not normally be allowed to cross examine its own witness and declare the same hostile, unless the Court is satisfied that, the statement of the witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority or where the Court is satisfied that, the witness is not speaking the truth and it may be necessary to cross examine him to get out the truth."

5. In para-12 of the impugned order, the learned Trial Judge has observed that after having considered the submissions made on behalf of the defendants i.e. present

(3)

petitioners and considering the evidence of DW-1 Bhingardive, it is difficult to accept the contention of the defendants that DW-1 has resiled from the facts of measurement of Survey No.286. The learned Trial Judge has further observed that DW-1 is speaking everything about the said measurement and his statement does not exhibit an element of hostility. I fully endorse the observations made and the finding recorded by the learned Trial Judge. The judgment relied upon by the learned counsel in the case of **"Radhyesham Ramkisan Chandak"** (cited supra) is not at all helpful for the petitioners to buttress their contentions. The writ petition being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R. BORA, J.)

Mujaheed//