

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

WRIT PETITION NO.6816 OF 2018

Nagnath S/o Ganpatrao Suryawanshi

Petitioner

Versus

Champabai w/o Maroti Kotambe

Respondent

Mr. R.K. Ashtekar advocate for the petitioner

Mr. G.G. Suryawanshi Advocate for Respondent No. 1

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

(Date : 1ST MARCH, 2019)

PER COURT :-

1 On 2.7.2018, this Court (Coram: Shri Sunil P. Deshmukh, J) had passed the following order:-

“ Issue notice to respondents, returnable on 14th August, 2018.

2. Application for issuing summons to witness was filed in the year 2016 and order has been passed in 2017 and according to instructions of the learned Counsel, matter has not progressed further. Learned Counsel for petitioner urges for interim relief stating that no particular prejudice in the process is likely to be caused to other side.

3. In the circumstances, there shall be *ad-interim* relief in terms of prayer clause 'C' till returnable date.

4. Petitioner shall deposit sum of Rs.10,000/- (Rs. ten thousand only) before the Trial Court to show his bonafides, within a period of four weeks from today, fate of which will be decided finally at the end of hearing of the writ petition. The deposit shall be without prejudice to the claims of rival sides.

5 In addition to service through Court process, petitioner shall serve respondents by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect by returnable date. In case of failure to serve respondents privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would automatically cease to operate. "

2 Learned counsel for the petitioner informs that he has deposited an amount of Rs.10,000/- before the Trial Court and respondent No.1 has withdrawn the said amount from the trial Court.

3 I have heard the submissions of the learned counsel for the respective sides.

4 Issue is, as regards the Application Exhibit 114 filed by

the petitioner in RCS No.215/2018, seeking leave to examine a bond-writer Viz. G.D. Sayed from Chakur. The evidence of the plaintiff was already concluded. Only on account of recalling of witness No.2 by order of the Court dated 2.12.2015, by imposing costs of Rs.1500/-, that the plaintiff again got an opportunity to examine the said witness.

5 In these circumstances, the contention of the respondent is sustainable that now the plaintiff cannot be permitted to once again seek liberty to produce a witness on his behalf when the name of the witness was not mentioned in the list of witnesses.

6 Though, I find that the learned counsel for the respondent is right in his submissions, it is only in the peculiar facts of this case and the developments that have taken place in the interregnum, that in view of the order passed by this Court on 2.7.2018, I am entertaining this petition.

7 In the light of the above, this petition is allowed, keeping in view the *ad-interim* relief granted by this Court on 2.7.2018.

The impugned order dated 5.10.2017 is set aside and Exhibit 114 is allowed as Respondent No.1 has already withdrawn the amount of Rs.10,000/- deposited by the plaintiff.

8 The plaintiff shall, now produce the said witness for examination-in-chief on 22.3.2019 before the Trial Court. Affidavit in lieu of examination-in-chief shall be tendered on the same day. A copy of the said affidavit would be supplied to the defendants on or before 18.3.2019.

9 If either of these directions are not complied with, this order shall stand recalled and the impugned order dated 5.10.2017 shall stand restored on 25.3.2019. It is made clear that the petitioner – plaintiff shall not file any further application for seeking recall of any witness or for producing any witness in his case.

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