

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

WRIT PETITION NO.3555 OF 2018

**GAUTAM VIJAY BORA
VERSUS
AJAY SAHEBRAO BARASKAR AND OTHERS**

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Advocate for the Petitioner : Shri Palod L.B..
Advocate for Respondent 6 : Shri A.P.Avhad
Advocate for Respondent 7 : Shri R.D.Borde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th February, 2019

Per Court:

1 When this Court issued the notice on 09.04.2018, the submissions of the Petitioner were recorded as under :-

- "1. Leave granted to amend the petition. Amendment be carried out within three days from date of order.
2. Heard the learned counsel for the petitioner.
3. In nut-shell, it is the contention of the learned counsel for the petitioner that the order passed by the trial Court is perverse and not sustainable in the eye of law. By referring the contents of the application, filed vide at Exhibit 110, the learned counsel pointed out that the application was moved seeking permission to examine the witness for further evidence. The trial Court has treated the application as an application filed seeking recall of the witness and rejected the same.
4. On due consideration of the submissions advanced in the light of the order passed, the following order is passed:

ORDER

- I) Issue notice to respondents, making it returnable on 13.04.2018. Hamdast is permitted.

- II) *In addition to service through process of court, petitioners are permitted to serve the respondents by all permissible modes of service including private service and file affidavit of service on the next date of hearing.*
- III) *The parties be put to notice that the petition may be heard finally at the stage of admission.*
- IV) *The further proceeding of Sp.C.S. No.1/2011 is stayed till 13.04.2018."*

2 The learned Advocate for Respondent No.6 has strenuously opposed this petition. The contention is that after the Plaintiff has concluded his evidence, the filing of an application for producing one more witness is unsustainable. The name of the said witness was not included in the list of witnesses and therefore, he submits that this petition be dismissed with costs.

3 In the alternative, he submits that if this Court is inclined to entertain this petition, heavy costs may be imposed and the said amount may be donated for the treatment of poor patients.

4 Despite service of court notice, none appears for Respondent Nos.1 to 5.

5 The learned Advocate for Respondent No.7 supports the petitioner.

6 I find from the application Exhibit 110 filed by the Petitioner/Plaintiff in Special Civil Suit No.1/2011 that the said application was filed for seeking permission to examine the witness so as to prove an

agreement to sell. It was not filed under Order 18 Rule 17 of the Code of Civil Procedure for seeking recalling of any witness. I find that the Trial Court has completely misdirected itself by treating Exhibit 110 as an application filed under Order 18 Rule 17 seeking recalling of the witness.

7 It is settled law that the court should endeavour to extend a reasonable opportunity to the litigating sides for leading evidence. Unless laches or oblique motives are attributable to the conduct of the applicant, such an application needs to be considered.

8 In view of the above, this Writ Petition is partly allowed. The impugned order dated 06.03.2018 is quashed and set aside. The application Exhibit 110 is allowed with the following directions :-

(a) The Petitioner/ plaintiff shall prepare the affidavit in lieu of examination-in-chief of the witness, namely, Ishwar Ashok Bora and shall supply the copy of the affidavit to the learned Advocates for the defendants on 15.02.2019.

(b) The said affidavit shall be tendered in the Court on 20.02.2019.

(c) The Defendants shall thereafter, cross examine the said witness.

(d) The Petitioner / plaintiff shall deposit an amount of Rs.3000/- (Rupees Three Thousand) as donation for the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), to be deposited

with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad" and produce a receipt of such deposit before the Registry of this Court on or before 25.02.2019.

kps

(RAVINDRA V. GHUGE, J.)