

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO.12213 OF 2016

RASHID PASHAMIYA YEROLE
VERSUS
IBRAHIM MAQBOOL MANNULLA

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Advocate for Petitioner : Mulla Madar M. And Y B Pathan.

Advocate for Respondent : Mr. Deshmukh Rajiv B.

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CORAM : V. K. JADHAV, J.

DATE : 02.12.2019

PER COURT :-

1. By consent of the parties, heard finally, at admission stage.
2. The petitioner-plaintiff has filed an application Exh.44 in Regular Civil Suit No.68 of 2011 seeking permission to recall the respondent-defendant for his cross-examination on the basis of certain documents. It is the case of the petitioner-plaintiff that he obtained the certified copies of those documents later on and therefore, constrained to file the said application Exh.44 subsequently. The learned Civil Judge Junior Division, Deoni by impugned order dated 23.11.2016

below Exh.44 has rejected the said application, hence this Writ Petition.

3. The learned counsel for the petitioner-plaintiff submits that at the time of the cross-examination of the defendant below Exh.38, the certified copies of some important documents were not available and therefore, the petitioner-plaintiff would not provide sufficient information to his counsel. Consequently the plaintiff could not cross-examine the defendant on those points, even the petitioner has shown his willingness to pay the requisite charges to the defendant for recalling him for his further cross-examination. However, the Trial Court has not considered the same and rejected the application erroneously.

4. The learned counsel for the respondent-defendant submits that the Trial Court has rejected the application by referring the various dates. Initially the petitioner-plaintiff had filed his affidavit of examination-in-chief in the year 2012 and in the year 2016 the plaintiff had closed his evidence. On 13.04.2016, the defendant had filed his affidavit of examination-in-chief and no cross-examination order came to

be passed since the petitioner-plaintiff and his counsel remained absent. The said order came to be set aside and accordingly the petitioner-plaintiff has cross-examined the defendant on 27.07.2016. The learned counsel submits that apart from this, the petitioner-plaintiff has not given any reference to the documents in his application on the basis of which he proposed to recall the defendant for his further cross-examination. There is no substance in the Writ Petition and the Writ Petition is thus liable to be rejected.

5. On going through the contents of the application Exh.44 and the impugned order passed by the Trial Court, I find no fault in the order impugned in this Writ Petition. The petitioner-plaintiff has not explained on the basis of which documents he proposes to cross-examine the defendant by recalling him. There is no specific reference to the documents in his application. The petitioner-plaintiff even has not taken any pains to point out those documents in this Writ Petition also. It thus appears that the application Exh.44 is the vague application. The suit is of the year 2011. The defendant cannot be recalled for his further cross-examination at the whims of the petitioner-plaintiff. I find no substance in this

Writ Petition. Hence, the following order :

ORDER

- (i) Writ Petition is hereby dismissed.
- (ii) As per the order passed by this court the petitioner has deposited Rs.10,000/- (Rupees Ten Thousand only) before this Court to show his bonafides. By consent an amount of Rs.5,000/- shall be paid to the CRECHE / Day Care Centre run by Advocates Bar Association, High Court, Aurangabad and the remaining amount of Rs.5,000/- shall be returned to the petitioner-plaintiff.
- (iii) Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-