

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9489 OF 2018

Balaso Kareem Mullani

...Petitioner

vs.

Dilavar Kareem Mullani and Anr.

...Respondents

Mr. Umesh Pawar I/b. Mr. K.P. Lad, for the Petitioner

Mr. S.S. Koregave, for Respondent No. 1.

Mr. R.G. Patil, for Respondent No. 2.

CORAM : M. S. SONAK, J.

DATE : MAY 02, 2019

ORAL JUDGMENT

. Heard Mr. Umesh Pawar, learned counsel for the Petitioner,
Mr. S.S. Koregave, learned counsel for Respondent No. 1 and Mr.
R.G. Patil learned counsel for Respondent No. 2.

2. Rule. Rule is made returnable forthwith with consent of and
at the request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 29th June,
2018 by which the application taken out by Respondent No. 1 at
Exhibit 290 seeking leave to cross examine the Respondent No. 2 if
and when occasion arises for, came to be allowed.

4. Mr. Pawar, learned counsel for the Petitioner points out that the Respondent Nos. 1 and 2 who are Defendant Nos. 1 and 2 in the suit had filed written statement. He submits that in such a situation, there is no question of allowing Respondent No. 1 to cross examine Respondent No. 2. He also submits that the application made by Respondent No. 1 was quite vague and even premature. For these reasons, he submits that the impugned order warrants interference.

5. The learned counsel for Respondent Nos. 1 and 2 defends the impugned order on the basis of reasoning reflected therein.

6. According to me, the application (Exhibit 290) made by the Petitioner was totally premature. The application deserves to be rejected on this short ground alone. Since, the Defendant No. 2 has not examined himself, it is too premature to decide as to whether Defendant No. 1 deserves to be given any opportunity to cross examine Defendant No. 2. The issue as to whether such cross examination can be permitted, now that both Defendants had filed common written statement always have been addressed at the appropriate stage and not at this stage.

7. Accordingly the impugned order is set aside only on the ground that the application (Exhibit 290) made by Respondent No. 1 was premature. If and when any occasion arises, the Respondent No. 1 is granted liberty to make appropriate application which will have to be disposed of on its own merits and in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of such application if and when made.

8. All contentions of parties including the contentions now raised in the Petition are expressly kept open.

9. Accordingly, the impugned order is set aside with liberty as aforesaid.

10. Rule is made absolute in the aforesaid terms.

11. There shall be no order as to costs.

12. The interim order granted earlier is hereby vacated.

13. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)