

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION (LODGING) NO. 6 OF 2019
IN
SUIT NO. 2470 OF 1994
ALONG WITH
NOTICE OF MOTION (L) NO. 1085 OF 2019
AND
NOTICE OF MOTION (L) NO. 1873 OF 2019**

Divyakant Ranjitsingh Khatau ...Petitioner/Plaintiff
Vs.
Krishnabai Abhay Khatau & Ors. ...Respondents/Defendants

Mr.Mehul Shah with Mr.Snehal Deshmukh for Petitioner.
Mr.Jai Chhabria with Mr.Aditya N. Raut I/b. Desai Desai Carrimjee and
Mulla for Defendant Nos.1(b), 1(c) and 9.
Mr.Rajeev Carvalho I/b. Mr.N.N. Amin and Co. for Defendant No.1(d).
Mr.Vishesh Malviya and Ms.Khushboo, Deshmukh I/b. Rashmikan and
Partners for Defendant No.6.
Mr.Rajiv A. Jadhav I/b. VBA Legal for Defendant Nos.2 to 5.
Ms.Parinaz Vakil I/b. Vashi and Vashi for Defendant No.11.
Mr.Mehul Rathod with Ms.Dhruvika Bhayani for Defendant No.12.

**CORAM : S.C. GUPTE, J.
(IN CHAMBERS)**

DATE : 5 AUGUST 2019

P.C. :

This review petition seeks a review of an order passed by this court on 20 March 2018. There is a delay in filing the petition. The applicant Petitioner (original Plaintiff) has taken out a notice of motion (being Notice of Motion (Lodging) No.1085 of 2019) for condonation of delay. For the reasons stated in the affidavit in support of the notice of motion, the delay is condoned and the review petition is taken up for final hearing. The notice of motion is disposed of.

2 The order under review chiefly concerns the order in which the witness of Defendant No.9 (DW-1) should be cross-examined. The order requires those of the Defendants, who support Defendant No.9, to cross-examine DW-1 first before the Plaintiff and Defendant Nos.14 and 17 are allowed to cross-examine the witness. The controversy now arises concerning the proposed cross-examination of DW-1 by Defendant Nos.2 to 5.

3 Learned Counsel for the Plaintiff submits that Defendant Nos.2 to 5 have actively cross-examined the Plaintiff's witness and are, accordingly, not supporting the Plaintiff but are opposing the Plaintiff. It is submitted that, in the premises, these Defendants should be asked to cross-examine DW-1 before the Plaintiff does so.

4 Learned Counsel for Defendant Nos.2 to 5, on the other hand, submits that his clients do not either support the Plaintiff or Defendant No.9. Learned Counsel submits that, in the premises, there is no warrant for asking his clients to cross-examine DW-1 before the Plaintiff does so.

5 This being a suit for partition, each party is an interested party having its own say in the matter. There is nothing in particular in a matter like this about the manner of cross-examination to be conducted by individual parties. Considering the fact, however, that Defendant Nos.2 to 5 have cross-examined the Plaintiff's witness, it is in the interests of justice that they be asked to cross-examine DW-1 before the Plaintiff is asked to do so. Whether or not they support Defendant No.9, it is quite clear, on the basis of the manner in which the trial has proceeded so far as also on the

basis of the statement made before this court today that these Defendants (Defendant Nos.2 to 5) do not support the Plaintiff. This is a suit in which the Plaintiff claims a decree of partition. Since Defendant Nos.2 to 5 are his adversaries, propriety demands that Defendant Nos.2 to 5 should be asked to cross-examine DW-1 before the Plaintiff does so, even if Defendant No.9, whose witness is tendered as DW-1, is also an adversary.

6 In the premises, it is ordered that Defendant Nos.2 to 5 shall cross-examine DW-1 before the Plaintiff is allowed to cross-examine the witness.

7 It is agreed between the parties that cross-examination of DW-1 by Defendant Nos.2 to 5 should be conducted in court. It is ordered accordingly.

8 The review petition is disposed of in the above terms.

9 In view of the disposal of the review petition, Notice of Motion (L) No.1873 of 2019 does not survive and the same is also disposed of.

(S.C. GUPTE, J.)