

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 754/2018

(OMPRAKASH KULICHAND JUNEJA VERSUS ANITA OMPRAKASH BATRA & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri D.R. Bhoyar, counsel for petitioner.
 Shri D.G. Sharma, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 30, 2019.

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit 115 by which the application filed by the original plaintiff for production of a document with a view to confront the defendant no.2 during his cross-examination has been rejected.

Shri D.R. Bhoyar, learned counsel for the petitioner by relying upon the provisions of Order VII Rule 14(4), Order VIII Rule 1A(4) and Order XIII Rule 1(3) of the Code of Civil Procedure, 1908 (for short, 'the Code') submits that since the plaintiff intended to confront the defendant no.2 with two relevant documents in his cross-examination, the trial Court ought to have granted such permission. He submitted that the aspect of due diligence was not very relevant when the documents were sought to be produced for confronting a witness. He placed reliance on the decision in *Havovi Kersi Sethna Versus Kersi Gustad Sethna* [2011(3) Mh.L.J. 564] and submitted that the trial Court ought to have allowed that application.

Shri D.G. Sharma, learned counsel for the respondents supported the impugned order. He submitted that the defendant

no.2 was not concerned with both the documents that were sought to be produced by the plaintiff. He further submitted that since the defendant no.2 himself was being cross-examined, the provisions of Order XIII Rule 1(3) of the Code could not be relied upon. For that purpose, he referred to the decision in **Writ Petition No.5519 of 2011** [*Purushottam Shankar Ghodgaonkar Versus Gajanan Shankar Ghodgaonkar & Others*] decided at the Aurangabad Bench of this Court on 13.08.2012. The trial Court therefore was justified in rejecting the application.

On hearing the learned counsel for the parties, I find that the trial Court did not commit any error in rejecting the application at Exhibit 115. The plaintiff intended to confront the defendant no.2 in his cross-examination with two documents that he sought to rely. The provisions of Order XIII Rule 1(3) of the Code have been considered by the learned Single Judge in *Purushottam Shankar Ghodgaonkar* (supra) and it has been observed that said provision permits production of documents for the purposes of cross-examination of a witness of a party. It has been further observed that a party to the suit cannot be equated with a witness and hence by taking support of said provision a party to the suit cannot be confronted with such a document. In the light of this position which applies to the facts of the present case, the order passed by the trial Court does not deserve to be interfered with. The observations relied upon by the learned counsel for the petitioner in the decision cited by him cannot be applied in the light of the aforesaid decision. In that view of the matter the impugned order does not call for any interference. It is however clarified that the restriction in question relates only to confronting the defendant no.2 with said document and not any witness of the defendant no.2.

The Writ Petition stands dismissed with no order as to costs.

JUDGE

APTE