

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3859 of 2019

Ramesh S/o Mohanlal Taori

..VS..

Mukund S/o Babulal Shah

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

Court's or Judge's orders

Shri Yash Maheshwari, Adv. for the petitioner.
Shri H.D. Dangre, Adv. for the respondent.

CORAM : Z.A.HAQ, J.

DATED : 31st July, 2019

Heard.

The Original plaintiff takes exception to the order passed by the trial Court by which the application (Exhibit 127) filed by the plaintiff, is rejected. By the application (Exhibit 127), the plaintiff prayed that the affidavit in lieu of examination-in-chief of the defendant be discarded. According to the plaintiff, the affidavit in lieu of examination-in-chief of the defendant is required to be discarded as it is verbatim reproduction of the written statement and it is not confined to the facts, but incorporates the arguments also. According to the plaintiff, leading questions cannot be included in the examination-in-chief, but in the present case, it is done. The plaintiff further contends that absence of clarity in the affidavit in lieu of examination-in-chief would lead to confusion and the Court may be misled because of that.

The learned trial Judge has recorded that it is not the case of the plaintiff that the affidavit filed by the defendant in lieu of examination-in-chief contains the facts

which are not pleaded by the defendant or the affidavit contain statements which are irrelevant and not within personal knowledge of the defendant.

I find that the learned trial Judge has properly examined whether the affidavit is filed adhering to the permissible parameters, and finding that the objection raised by the plaintiff is baseless, has rightly rejected the application (Exhibit 127). I do not find any patent illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

At this stage, the learned advocate for the petitioner/plaintiff submitted that the plaintiff be granted liberty to file application pointing out the inadmissible portion in the affidavit on the ground that there are no pleadings. The plaintiff will be at liberty to file an application for pointing out such portion in the affidavit which does not has foundation in the pleadings, and if such application is filed by the plaintiff, it shall be considered by the trial Court in accordance with law.

With the above observations, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Trupti