

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

WRIT PETITION NO.3613/2017

Sunil S/o Mukundrao Joshi

..Vs..

Canara Bank, Bhandara and others

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

Court's or Judge's orders

Shri P.A. Abhyankar, Advocate for the petitioner.

CORAM : Z.A. HAQ, J.

DATED : 1.7.2019.

None for the respondent though served.
Heard Shri P.A. Abhyankar, Advocate for the petitioner.

This petition is filed by the original defendant No.2 to challenge the order passed by the trial Court by which the application (Exh. No.91) filed by the plaintiff is allowed. By the impugned order, trial Court has permitted the plaintiff to examine witness after both the sides had closed their evidence and part arguments were completed by the trial Court.

The submission on behalf of the petitioner / defendant No.2 is that the impugned order is without jurisdiction inasmuch as powers under Order 18 Rule 17 of the Code of Civil Procedure cannot be exercised at the stage at which the application (Exh. No.91) was moved. It is further submitted that though Court may resort to Section 151 of the Code of Civil Procedure but this power has to be exercised sparingly and in exceptional cases, and in the present case, the plaintiff has not been able to

point out that the request made on behalf of the plaintiff to examine witness after the matter was partly argued, would fall in that category. To support submission, reliance is placed on the judgment given by the Hon'ble Supreme Court in the case of *K.K. Velusamy V/s. N. Palanisamy* reported in **2011 (11) SCC 275**.

Learned Advocate for the original defendant is right in his submission that jurisdiction under Order 18 Rule 17 of the Code of Civil Procedure cannot be invoked at the stage at which the application (Exh. No.91) came to be filed, however, Court can take recourse to Section 151 of the Code of Civil Procedure, of course, in exceptional circumstances, and permit party to examine witness even at the stage of argument. In the present case, after the plaintiff had closed his evidence, defendant No.2 had sought permission to examine the plaintiff's witness No.1 and such permission was granted. Perhaps it is because of inadvertence of the Advocate of the plaintiff that permission to examine witness was not made at that stage. It is relevant to note that plaintiff is a Bank and the witness which is proposed to be examined is the Officer, who according to the plaintiff, can identify the signature on the documents.

In the above facts, in my view, learned trial Judge has not committed any error by allowing the application (Exh. No.91) and permitting the plaintiff to examine its witness. I see no reason to interfere with the impugned order. Hence, writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

The Branch Manager, Canara Bank, Bhandara shall take appropriate action against the person, who has received notice of this petition, and call explanation as to why the Bank is not represented before this Court.

The Branch Manager, Canara Bank, Bhandara shall place on record his affidavit alongwith the action taken report within one month.

JUDGE