

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.184 OF 2019

Bhanudas s/o Mahadeo Taksande, Wardha

-vs-

Eknath s/o Mahadeo Taksande, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. M. Patrikar, Advocate for petitioner.

Shri A. M. Ghare, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : April 02, 2019

Heard finally with consent of learned counsel for the parties.

The petitioner is aggrieved by the order dated 06/08/2018 passed by the trial Court below Exhibit-28. By that order the application filed by the original plaintiff seeking permission to adduce evidence has been allowed.

2. Shri S. M. Patrikar, learned counsel for the petitioner submitted that while remanding the proceedings to the trial Court this Court in its judgment dated 12/12/2017 in Second Appeal No.439/2016 and 440/2016 observed that the evidence already on record should be taken into consideration and fresh adjudication from the stage of hearing of the parties should be undertaken. By allowing the application below Exhibit-28 the proceedings are sought to be re-opened.

3. Shri A. M. Ghare, learned counsel for the respondent on the other hand submits that the plaintiff merely wants to refer to the extract of passbook of the plaintiff by relying upon the provisions

of Section 4 of the Bankers' Books Evidence Act, 1879. He states that he does not desire to examine any witness for leading such evidence.

4. In the light of this statement that no witness is sought to be examined and merely a copy of the extract of the plaintiff's passbook is sought to be relied upon, the apprehension expressed by the defendant as regards re-opening of the proceedings is taken care of.

5. Accordingly, the order passed below Exhibit-28 is clarified by observing that the plaintiff is permitted to place on record extract of his passbook by referring to provisions of Bankers' Books Evidence Act, 1879. It is made clear that plaintiff would not examine any witness except himself. The proceedings be decided on their own merits and in accordance with law.

The writ petition is disposed of in aforesaid terms. No costs.

JUDGE