

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

9 WRIT PETITION NO.303 OF 2020

MANISH DEVIDAS GAJJEWAR
VERSUS
ANUSAYABAI SURESH BALLURKAR

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Mr. N.S. Choudhary, Advocate for the petitioner.

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CORAM : **Rohit B. Deo, J.**

DATE : 15th January 2020.

PER COURT :-

. The petitioner is the plaintiff in Special Civil Suit No.7/2017 brought for damages due to malicious prosecution.

2. The plaintiff's evidence is over.

3. The defendant examined herself and filed precipe of closure of evidence dated 15.04.2019.

4. The defendant then moved an application dated 07.10.2019 seeking permission to examine three more witnesses. The defendant contended that she is a widow and since her deceased husband was bed-ridden due to bone cancer when her evidence was recorded, she was not in a proper frame of mind. She further submitted that one of the

three witnesses is the Investigating officer whose address was then not available.

5. The plaintiff opposed the prayer of the defendant to examine the three witnesses strongly. The only reason given by the plaintiff to oppose the application was that, in a suit for malicious prosecution, it would be impermissible to assess the credibility of the witnesses examined in the criminal trial.

6. The trial Court was pleased to allow the application for examination of three witnesses subject to payment of cost of Rs. 1000/-. It is this order which is challenged in writ jurisdiction.

7. Learned Counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of ***Vadiraaj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410*** in support of the submission that lacunae in the evidence cannot be filled in by recalling the witnesses. The submission of law, as a proposition, is unexceptionable. However, the facts before the Hon'ble Apex Court were that the witness who was already examined, was sought to be recalled and the Hon'ble Apex Court found that such recall of witness examined to fill in the lacunae which came to the fore

in the cross-examination is impermissible. The said decision has no relevance to the present controversy.

8. I do not see any error in the order impugned, much less an error warranting interference in writ jurisdiction.

9. Learned trial Court shall, however, ensure that a time bound programme is fixed for the examination of three witnesses and that the suit is disposed of as expeditiously as possible.

10. Subject to the observations and directions supra, the petition is disposed of.

(ROHIT B. DEO, J.)