

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

WRIT PETITION No. 200/2020

Baburao @ Bhaskar s/o Namdeo Patil,
Aged 64 years, Occupation – Business,
Resident of Nar Dipak Ice Factory,
Malkapur Road, Nandura, Tahsil – Nandura,
District – Buldana.

PETITIONER

--VERSUS --

1. Vijay S/o Tryambak Malge,
(through legal representatives;

1(a) Smt. Usha Vijay Malge,
Aged 45 years,
Occupation – Household,

1(b) Nishant Vijay Malge,
Aged 25 years,
Occupation – Service,

1(c) Ku. Shilpa Vijay Malge,
Aged 22 years,
Occupation – Household,
Nos.1(a) to 1(c)
R/o. Bramhnpuri, Gandhi Chowk,
Nandura, P. O. & TH. Nandura,
District – Buldana.

RESPONDENTS

Shri S. R. Deshpande, Advocate for the Petitioner.

Shri V. B. Bhise, Advocate for Respondent Nos.1(a) to 1(c).

CORAM : N. B. SURYAWANSHI, J.

DATED : 18th FEBRUARY, 2020.

ORDER :

. The petitioner/plaintiff challenges order passed below Exh.303 dated 09.12.2019 whereby prayer of the plaintiff seeking leave to re-examine fourth witness, has been rejected.

2] The plaintiff filed Regular Civil Suit No.77 of 2012 for permanent injunction against the defendants that they should not interfere in or disturb the lawful and peaceful possession of the plaintiff and should not damage in any manner the suit shop namely, Shrikrishna General Stores.

3] The plaintiff filed amendment application Exh.141. The plaintiff's application for amendment of plaint was allowed. Thereafter, the evidence of the plaintiff commenced. After cross-examination of fourth witness Gajanan Sopan Gavhale, who is Civil Engineer, the plaintiff filed application seeking permission for re-examination of witness Gavhale. It has come on record in the cross-examination of witness Gajanan Gavhale that at the place where suit shop was situated, new building is constructed. For the new building permission of the Municipal Council was obtained in January, 2015. Witness Gajanan Gavhale prepared construction map and construction permission application. Before preparing the map of proposed construction, witness Gajanan Gavhale took measurements on the site. In the cross-examination he has also stated that he gave the measurements of the Northern wall and East-West and North-South length of the building on plot No.302. Since last 8 months the said shop is not in existence and that shop was covered by Tin shade since last 2 years. According to the plaintiff, it is necessary to obtain explanation of witness Gajanan Gavhale about these new facts, which have come on record during the cross-examination. Hence, the plaintiff sought permission to re-examine witness Gajanan Gavhale. The said application was resisted by the defendant.

4] The learned Trial Court was pleased to reject the said application mainly on the ground that the details about the paper work

and the fact of new construction were within the knowledge of the plaintiff. These facts were brought on record by the plaintiff by way of amendment and the plaintiff is not entitled to render the admissions secured by the defendant in cross-examination of witness Gajanan Gavhale ineffective by re-examining the said witness. Hence, the learned Trial Court rejected the said application.

5] Heard the learned Advocate for the petitioner/plaintiff. The learned Advocate would urge that the fact that the witness Gajanan Gavhale prepared the paper work for new construction on the site of suit shop has come in the cross-examination of this witness for the first time. This fact was not within the knowledge of the plaintiff. In that view, it is necessary to grant permission to the plaintiff to conduct re-examination of witness Gajanan Gavhale.

6] By placing reliance on the Judgment of this Court in the case of *Gurdiyal Singh Vs. M/s. Arudatta Triotex Engineering Pvt. Ltd., Badalapur and another* reported in *2011(5) Mh.L.J. 889*, the learned Advocate submits that full opportunity of leading evidence needs to be extended to the litigating sides and re-examination has to be allowed, if new facts are introduced in the cross-examination.

7] On the other hand, the learned Advocate representing the respondents/defendants opposed the petition by submitting that the plaintiff has amended the plaint twice. By way of amendment the plaintiff has brought on record a new construction and construction permission. Thus, these facts were within the knowledge of the plaintiff and the plaintiff has failed to bring them on record in the examination-in-chief of witness Gajanan Gavhale. He supports the order passed by the learned Trial Court and submits that the learned Trial Court was justified

in rejecting the application of the plaintiff by a well reasoned order. He therefore, submits that there is no substance in the petition and it may be dismissed.

8] Perusal of record reveals that twice amendment applications filed by the plaintiff were allowed and the plaintiff has brought on record pleadings in respect of new construction as well as permission granted in that behalf. There is no dispute that the structure over the suit property collapsed and new structure is erected. Merely because witness Gajanan Gavhale has done the paper work for erection of new construction that by itself cannot be a reason for the plaintiff to seek re-examination of witness Gavhale. The admissions given by witness Gavhale during his cross-examination by defendant would be jeopardised if the re-examination is permitted to the petitioner.

9] Perusal of the cross-examination of witness Gajanan Gavhale shows that this witness has prepared a map of proposed construction and the application for permission of new construction, at the request of Vijay Malage (defendant). Though the plaintiff was aware about the construction permission and the new construction, however, this fact that the map of construction was prepared by witness Gavhale was disclosed to the plaintiff for the first time during the cross-examination of this witness. This witness has also given certificate of the suit shop by visiting the said shop, certifying that the suit shop was in good condition and it was not in dilapidated condition. However, it hardly makes any difference to the case of the plaintiff in as much as the fact remains that the suit shop of the plaintiff was demolished and on that site new construction was made. Thus, the plaintiff was aware of these developments and merely because the map of proposed construction was prepared by witness Gavhale, that by itself does not justify the

prayer of the plaintiff for re-examination of the said witness.

10] The defendant has secured certain admissions during the cross-examination of witness Gavhale and if re-examination is permitted to the plaintiff, the effect of the admissions given in favour of the defendant would be washed out.

11] The ratio of **Gurdial Singh** (cited supra) is rendered in different facts. In the present case, in the amendment carried out by the plaintiff, in para 4-A he has specifically contended that by misleading the Municipal Council, Nandura, defendant has obtained construction permission on 30.08.2018 vide permission No.2026/2018. The plaintiff has challenged the said construction permission before the District Collector, Buldhana and the matter is subjudice. "In para 4-B" it is stated that in the first week of November 2019, the defendants have illegally demolished the entire building alongwith the suit shop and has started construction of commercial complex. Thus, the plaintiff was well aware of the new construction and the permission granted for the same.

12] In my view, there are no new facts brought in the cross-examination of witness Gajanan Gavhale, so also there is no ambiguity in his evidence, for which the plaintiff can be permitted to conduct re-examination. As is observed herein above, the details about paper work and new construction seems to be well within the knowledge of the plaintiff. No case is made out by the plaintiff for conducting the re-examination of witness Gajanan Gavhale.

13] The learned Trial Court has rightly rejected application Exh.303 filed by the petitioner/plaintiff. I do not find any reason to

interfere with the order passed by the learned Trial Court in extraordinary writ jurisdiction. Hence, the following order.

14] Writ Petition is dismissed.

15] There shall be no order as to costs.

JUDGE

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