

Neeta S.
Sawant

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 1091 / 2020

Alongwith

Interim Application No. 510 / 2021

Pandharinath L. Bhandari

Aged : 65 years, Occupation : Business,

Residing at Pitrismruti, Shimpoli Village,

Borivali (West), Mumbai - 400092.

.. Petitioner

Versus

1. Shri. Bharti Trimbak Bhandari

Age : 51 years, Occu: Housewife

2. Shri. Nayan Trimbak Bhandari,

Age : 24 years, Occu: Business

3. Shri. Dhiraj Trimbak Bhandari

Age : 27 years, Occu: Business

All have residence of Pitrudhan, Charkop Village,

M.G. Road, Kandivali (W), Mumbai - 400067. .. Respondents

Mr. N.P. Wagle, Advocate for the Petitioner.

Mr. Joydeb B. Saha i/by Mr. Manish N. Bijutkar, Advocate for
Respondent Nos. 1 to 3.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 19th March, 2021.
PRONOUNCED ON : 24th March, 2021.

JUDGMENT :-

1. Rule.
2. Rule made returnable forthwith. Heard, finally with consent of parties.
3. Petitioner instituted L.E. Suit No. 63/81 of 2012 against the Respondents - Defendants for eviction on the ground that the Defendants were gratuitous licensees. Defendants denied the suit claim and would assert their title in the suit property. Plaintiffs' evidence was closed, on 13th March, 2018. While Defendants' witness was under cross-examination, Plaintiff had filed an application under Order-18, Rule-17 read with 151 of

the Code of Civil Procedure, 1908 for filing additional documents and recalling his witness. Vide this application, Petitioner sought to place on record seventeen documents. Application was rejected, on 12th July, 2018. Order was confirmed in revision by the Appellate Bench, Small Causes of Bandra, Mumbai.

4. Facts emerging from Proceedings : It may be stated that Defendants' witness is under cross-examination for more than 20 months. For the reasons stated, the learned trial Court had passed 'no cross order' on 23rd October, 2019. However, this order was set aside on 16th November, 2019, subject to condition that Advocate for the Plaintiff would cross-examine the Defendants' witness no.1, without causing further delay and shall seek no adjournment on petty grounds. Be that as it may, on 16th November, 2019, while Defendants'

witness no.1 was under cross-examination, witness was confronted by showing a document, after inviting his attention to paragraph no.10 of examination-in-chief. The trial Court did not allow Plaintiff to confront the witness with a document, since it was not produced with the pleadings, at the appropriate stage. However, the learned trial Court permitted the Advocate, to cross-examine the witness, relating to paragraph no.10 of the examination-in-chief. Plaintiffs' advocate, thus declined to hold further cross-examination of the witness. Whereafter the Court has passed the following order:

"At this juncture, advocate for the plaintiff has wind up his file and not put any further question to the witness and further stated that he want to challenge the above order in revision. However, I would like to invite his attention towards the order passed below Exh. 68 today itself wherein third time the no cross order was set aside with direction to the plaintiff not to

seek adjournment on petty grounds. Whereas, the above scenario speaks the volume that plaintiff's advocate has created an artificial ground to adjourn the matter anyhow. As he is not going to further cross examine to the D.W. No.1, hence in the light of order below Exh. 68 the further cross-examination of the witness is hereby closed.

Matter is adjourned for defendant's next witness, if any on next date."

5. Aggrieved, by the order as reproduced above, revision was preferred before the Bench at Small Causes Court. It was dismissed on 13th January, 2020. Feeling aggrieved by the orders of the trial Court and the Revisional Court. Thus, petition is preferred under Article 227 of the Constitution of India.

6. Heard. Learned Counsel for the parties. Question arising for consideration; are

a. Whether scheme of Code of Civil Procedure, 1908 (CPC

for short) interdicts, the parties to the suit from confronting the witness of adverse party with a document, not on the Courts' record, but shown or produced to the witness for the first time in his cross-examination ?

b. The next question is: the party, which has otherwise failed to file documents at appropriate stage could be permitted to bring on record the document through evidence of the witness of adversary by putting or confronting him with such document?

7. The main object of the cross-examination is to bring out the falsity and to find out the truth and further to weaken qualify or destroy the case of Opponent and to establish the own case through Opponents' witness. Thus objects are to impeach the accuracy, credibility and general value of the evidence given in-chief, to sift the facts already stated by the

witness, to detect and expose discrepancies or to illicit suppressed act, which will support the case of cross-examining party. The exercise of this right is regarded and one of the most efficacious for recovery of truth. Provisions of Section 137 of the Indian Evidence Act, 1872 empowers and Section 146 to 150, regulates cross examination of witness. Confronting witness, with a document is permissible to test veracity of witness; under Section 146 of the Evidence Act. Though the range of cross-examination is unlimited, it must relate to relevant facts. Thus ‘relevancy of document’, to which witness is confronted with, is a essential condition.

(Emphasis supplied)

8. Thus, to be stated that the provisions of Order-7 Rule-14(4), Order-8 Rule-1 (A)(4) and Order-13 Rule-3(a) of the CPC are exceptions to the Rules, regulating the production of

documents by the Plaintiffs and Defendants alongwith the plaint and written statement. To achieve the desired result. While witness of adverse party is examined, if the party to the suit is not permitted to confront the witness with a document, which has not been produced with the pleadings, adverse party cannot test the veracity or impeach the credit of the witness. Thus, the legislation in its wisdom carved out aforesaid exceptions. Thus, in view of explicit provisions of CPC, it cannot be held that the document cannot be produced or shown, for the first time to the witness during the cross-examination, though it was not produced with the pleadings. The first question is answered accordingly.

9. The facts of this case are peculiar in the sense herein, Petitioner-Plaintiff attempted to place additional documents on record seeking leave for recalling its witness, which he had not

filed at the appropriate stage. This request was rejected by the trial Court and confirmed in the revision. In given case, party may make an attempt to slide-in the documents through witness of opposite party by confronting him with such documents which he had failed to produce at the appropriate stage. Under such circumstances, the Court has to be attentive and cautious especially, when a document sought to be confronted, was either not produced with the pleadings at the appropriate stage and or when leave to produce additional document was refused by the Court. Therefore, under such circumstances, the Court should permit only those documents with which witness is concerned; and it relates to the “relevant facts” and “facts in issue”. As such the documents confronted to the witness, if found falling beyond the “facts in issue” and “relevant facts”, the Court may decline to confront the witness with such documents. Somewhat same issue fell

for the consideration before the Delhi High Court in the case of **Subhash Chander Vs. Bhagwan Yadav** (Indian Kanoon - <http://indiankanoon.org/doc/77035150/>) and it has been answered as follows;

"I may however put a line of caution over here. It is often found that a party which has otherwise failed to file documents at the appropriate stage, attempts to smuggle in the documents in the evidence of the witness of the adversary by putting the documents to the witness whether relevant to that witness or not. The court should be cautious in this regard. Only those documents with which the witness is concerned and/or expected to know or answer ought to be permitted to be put to the witness in the cross examination. If other documents with which the witness is not concerned are confronted only in an attempt to have the same filed and to thereafter prove the same, the court would be justified in clarifying that the document is taken on record only for the purpose of cross examination and the producing party would not be entitled to otherwise prove the same, having not filed it at the appropriate stage."

10. In consideration of the facts of the case and for the reasons stated, the trial Court shall permit the Petitioners-Plaintiffs to confront the witness of Defendants with a document, if it is “relevant” and has bearing over a “fact in issue” and not otherwise.

11. The Writ Petition is allowed in the aforesaid terms and disposed of.

12. Interim Application is disposed of accordingly.

(SANDEEP K. SHINDE, J)