

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

**WRIT PETITION NO.5633/2018**

**Mr. Gajanan Tukaram Khirodkar**

**...Versus...**

**Munir Khan Subhan Khan and others**

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

Shri R.R. Vyas, Advocate for petitioner  
Shri A.P. Chaware, Advocate for respondent nos.1,2,5,6 and 8.

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 31/08/2021**

1. Heard Shri Vyas, learned Counsel for the petitioner and Shri Chaware, learned Counsel for the respondent nos.1, 2, 5, 6 and 8. None appears for the other respondents, though served.

2. The petition challenges the order, dated 19/7/2018, passed by the learned Trial Court below Exh.73 in Regular Civil Suit No.52/2014, whereby the application filed by the defendants to recall the plaintiff for re-cross-examination has been rejected.

3. The civil suit is filed by the plaintiffs for recovery of possession and declaration. The affidavit-evidence of the

plaintiff was filed on 28/6/2016 and thereafter on 06/04/2017 the further chief was recorded, after which the plaintiff has been cross-examined by the learned Counsel for the defendants. Thereafter, on 27/04/2017 the evidence of the plaintiff was closed. The defendants also adduced the evidence of Gajanan Khirodkar (petitioner). It is after the evidence of DW-1 is over, that the application came to be filed on 14/12/2017 for recalling the plaintiff for re-cross-examination, which has been rejected.

4. Learned Counsel for the petitioner submits that due to change of Counsel, it was realized, that the cross-examination of the plaintiff, on some documents, had not been done and therefore, the application came to be filed. He submits that an opportunity to cross-examine be afforded in view of the mistake on the part of the earlier Counsel in not doing so.

5. The application at Exh.73 merely makes a vague allegation in para 3 that cross-examination remained to be conducted on the issues and documents on record by the earlier Counsel. It does not specify as to what is the nature of the cross-examination, which was required to be conducted, which has not been done nor does it specify the documents in respect of which it is alleged that the earlier Counsel has not conducted the cross-examination. The application is

therefore as vague as possible, devoid of any details, in view of which, merely because there has been a change of Counsel, the same cannot be a ground for permitting re-cross-examination of the plaintiff that too at a stage when the evidence of the plaintiff is already closed and the evidence of DW-1 is also over. The clock cannot be permitted to be turned back on the basis of a vague allegation. That being the position, I do not find any infirmity with the impugned order passed by the learned Trial Court. The writ petition is devoid any merits and is accordingly dismissed. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar