

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 1565 OF 2022

Shashikumar s/o Shamrao Chaudhari,
Age: 80 years, Occ: Legal Practice,
R/o. 'Shamendra', Plot No 468,
Near Kailas Apartment, N-3,
CIDCO, Aurangabad,
Tq. and Dist. Aurangabad.

... **PETITIONER**
(Orig. Objector)

VERSUS

1. Shri Vijaykumar s/o Savlaram Shastri,
Age: 77 years, Occu: Retired,
R/o. Shastri Niwas, Nageshwarwadi,
Aurangabad, Tq. & Dist. Aurangabad.
2. Smt. Yogita Sudhir Shastri,
Age: 45 years, Occu: Service,
R/o. Shastri Niwas, Nageshwarwadi,
Aurangabad, Tq. & Dist. Aurangabad.
3. Shri Shriram s/o Laxmanrao Varudkar,
Age: 81 years, Occu: Retired Govt. Employee,
R/o. Adalat Road, Aurangabad,
Tq. and Dist Aurangabad.
4. Smt. Sudha @ Sunita Sudhakar Deshpande,
Age: Major, Occu: Not known,
R/o. Plot No. 48, Guruprasad,
Surana Nagar, Aurangabad,
Tq. and Dist. Aurangabad.
5. Shri Pravind s/o Digambar Manohar,
Age: Major, Occu: Not known,
R/o. Govind Bhavan, Gore Peth,
Nagpur Tq. and Dist Nagpur.

6. Sau. Tanuja w/o Pravin Manohar,
Age: Major, Occu: Not known,
R/o. Govind Bhavan, Gore Peth,
Nagpur, Tq. and Dist Nagpur.
7. Shri Sudhiar s/o Vijaykumar Shastri,
Age: Major, Occu: Not known,
R/o. Shastri Niwas, Nageshwarwadi,
Aurangabad, Tq. and Dist. Aurangabad.

... **RESPONDENTS**

(Resp. Nos.1 & 2 are Orig. applicants &
Resp. Nos.3 to 7 are Orig. respondents)

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Mr. Vivek J. Dhage, Advocate for Petitioner.

Mr. Shripad S. Kulkarni, Advocate for Respondent Nos.1 to 7.

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CORAM : **SHRIKANT D. KULKARNI, J.**

RESERVED ON : 16th March, 2022.

PRONOUNCED ON : 23rd March, 2022.

JUDGMENT :

. Rule. Rule made returnable forthwith. Heard finally at admission stage with consent of both the sides.

2 The petitioner has challenged the order dated 4th January, 2022 passed below Exhibit-70 by the Deputy Charity Commissioner, Aurangabad Region, Aurangabad in Application No.J-1/19/2018 under

Section 50A-1 of the Maharashtra Public Trust Act, 1950 (hereinafter referred to as the “Act” for the sake of convenience), whereby the learned Deputy Charity Commissioner was pleased to allow the application for production of documents moved by respondent No.1.

3 Let us have a glance on brief facts:

- a) The proceedings of inquiry under Section 50A-1 of the Act is in progress. The cross-examination of the petitioner in the capacity as original objector is in progress when respondent No.1 moved an application before the learned Deputy Charity Commissioner and sought permission to produce certain documents to bring on record contradictions in the version of the petitioner. The say of the petitioner was called upon and accordingly, the petitioner has filed his say.
- b) The learned Deputy Charity Commissioner after considering the facts of the case, arguments advanced on behalf of both the sides and considering the provisions of Order VII Rule 14 (4), Order VIII Rule 1(A)(4)(a) and Order XIII Rule 1(3)

(a) of the Civil Procedure Code was pleased to allow the application for production of documents.

c) Feeling aggrieved by the order of allowing production of documents by the Deputy Charity Commissioner, Aurangabad Region, Aurangabad, the petitioner has knocked the doors of this Court by taking aid of Article 227 of the Constitution of India.

4 Heard Mr. Vivek Dhage, learned counsel for petitioner and Mr. S. S. Kulkarni, learned counsel for respondents. Perused the copy of application vide Exhibit-70, say filed by the petitioner/objection petitioner and the impugned order dated 4th January, 2022. I have also gone through the copies of statements of respondent Nos.1 and 2 in the proceedings, copy of memo of inquiry No.J-1/19/2018 and copy of memo of objection filed by the petitioner.

5 According to Mr. Vivek Dhage, learned counsel for petitioner, the impugned order passed by the learned Deputy Charity Commissioner, Aurangabad is improper, incorrect and illegal and liable to be quashed and set aside. He submitted that the evidence of original applicant Nos.1 and 2 is over. Cross-examination of the petitioner/objection petitioner is in progress. The respondents, in

order to fill up lacuna in their case, have attempted to lead evidence in the nature of documents though their evidence is already over. He invited my attention to Order VI Rule 17 of the Code of Civil Procedure and vehemently submitted that in absence of any pleading, the Court cannot go into the same even though some evidence is adduced. A party has to plead its case and produce sufficient evidence to substantiate its case. He also invited my attention to Section 61 of the Evidence Act. Mr. Vivek Dhage, learned counsel for petitioner vehemently submitted that the impugned order has caused prejudice to the rights and interest of the petitioner. There was no reason for the Deputy Charity Commissioner to allow the production of documents at a very late stage when cross-examination of the petitioner is at fag end. Mr. Vivek Dhage, learned counsel for petitioner urged to quash and set aside the impugned order passed by the Deputy Charity Commissioner dated 4th January, 2022.

6 Mr. Vivek Dhage, learned counsel for the petitioner has placed reliance on the following citations in support of his submissions:

- a) ***Biraji @ Brijraji and another Vs. Surya Pratap and others***, reported in, ***2020 (10) SCC 729***;

- b) ***Noor Kabirdin Meghani and others Vs. Sanjeev Manuel D'Souza***, reported in, ***2021 (5) All.M.R. 143***;
- c) ***Liquidator Vs. Jeejaee Estate and others***, reported in, ***2019 (1) All.M.R. 884***; and
- d) ***Rajasthan State TPT Corpn. and another Vs. Bajrang Lal***, reported in, ***2014 AIR SCW 2058***.

7 Per contra, Mr. S. S. Kulkarni, learned counsel for respondents supported the impugned order passed by the Deputy Charity Commissioner. He invited my attention to the observations made by the Deputy Charity Commissioner in paragraph 10. He pointed out that application for production of documents came to be allowed by making observations that mere production may not cause any harm to the petitioner. The dispute between the parties would be resolved once for all by allowing the parties to produce the documents, which are already in existence.

8 Mr. S. S. Kulkarni, learned counsel for respondents submitted that the impugned order is proper, correct and legal in view of the provisions of Order VII Rule 14(4), Order VIII Rule 1-A(4) and Order XIII Rule 1(3)(a) of the Code of Civil Procedure.

9 Mr. S. S. Kulkarni, learned counsel for the respondents has placed his reliance on the recent decision of the Division Bench of this Court in ***Writ Petition No.7717 of 2019 (Mohammed Abdul Wahid S/o Late Dr. Mohammed Abdul Aziz Vs. Smt. Nilofer Wd/o Dr. Mohammad Abdul Salim and another)*** with connected writ petition dated 9th February, 2021. He submitted that the Division Bench at Nagpur has recently ruled in above said case that documents can be directly produced at the stage of cross-examination of a witness, (who is not a party to the suit), to confront the witness for refreshing his memory, under Order VII Rule 14 (4), Order VIII Rule 1-A(4) and Order XIII Rule 3 of the Code of Civil Procedure without seeking prior leave of the Court. Mr. Kulkarni, learned counsel for the respondents urged to dismiss the petition.

10 I have considered the submissions made by Mr. Vivek Dhage, learned counsel for petitioner and Mr. S. S. Kulkarni, learned counsel for respondents.

11 It is not in dispute that the cross-examination of the petitioner is in progress before the Deputy Charity Commissioner, Aurangabad in an inquiry under Section 50A-1 of the Act. While facing the cross-examination, the petitioner seems to have given

certain bold admissions. The question was put to the petitioner about signing of certain documents and papers and the petitioner went on admitting about signing those documents and papers, however, at the instance of one Mr. Shelke. The petitioner is a senior advocate and by considering those admissions and the tone of cross-examination, the respondents constrain to move the application vide Exhibit-70 seeking permission to produce documents. Mr. Vivek Dhage, learned counsel for petitioner has referred citations on the point that in absence of any pleading in a suit/proceedings by a party, at a belated stage, after evidence is closed, cannot be allowed to produce documents. He submitted that it is well settled position of law that in absence of pleading, any amount of evidence will not help the party. That is well settled position of law and there is no need to discuss those citations though relied upon by Mr. Vivek Dhage, learned counsel for petitioner.

12 The question revolves around granting permission to respondent No.1 to produce documents when cross-examination of the petitioner is in progress. Whether it is permissible and secondly, whether it may cause prejudice to the rights and interest of the petitioner. The Division Bench of this Court in the case of ***Mohammed Abdul Wahid S/o Late Dr. Mohammed Abdul Aziz Vs.***

Smt. Nilofer Wd/o Dr. Mohammad Abdul Salim and another (supra) has recently decided that question, which has settled the position of law and covered the entire controversy. In **Mohammed Abdul Wahid S/o Late Dr. Mohammed Abdul Aziz Vs. Smt. Nilofer Wd/o Dr. Mohammad Abdul Salim and another** (supra), the Division Bench of this Court has answered the following legal questions as under:

1	Whether a party to a suit i.e. plaintiff/or defendant is also a witness and the provisions of Order VII Rule 14, Order VIII Rule 1-A (4) (a) and Order XIII Rule 1 (3) (a) of the C.P.C. need to be interpreted and applied by equating “party” with a “witness” ?	A party to a suit (plaintiff/ defendant) cannot be equated with a witness. The provisions of Order VII Rule 14 (4), Order VIII Rule 1-A (4) which includes Rule 1-A (4) (a) and Order XIII Rule 1 (3) which includes Rule 1 (3) (a) of C.P.C. are not applicable to a party, who enters the witness box to tender evidence in his own cause. The provisions are applicable to a witness alone.
2	Whether documents can be directly produced at the stage of cross-examination of a party and/or a witness to confront him/her without seeking any prior leave of the Court under Order VII Rule 14 (4), Order VIII Rules 1 (A) (4) (a) and Order XIII Rule 1	Documents can be directly produced at the stage of cross-examination of a witness, (who is not a party to the suit), to confront the witness for refreshing his memory, under Order VII Rule 14 (4); Order VIII Rule 1-A(4) and Order XIII Rule 3 of C.P.C.

	(3) (a) of the Civil Procedure Code ?	without seeking prior leave of the Court.
3	Whether the observations made in the judgment in the cases of Purushottam s/o Shankar Ghodgaonkar (supra) and Vinayak M. Dessai (supra), to the effect that permitting production of documents directly at the stage of cross-examination of a witness and/or a party to a suit would amount to springing a surprise and hence, it is impermissible, are correct in the light of the plain reading of the aforesaid provisions and if accepted it would lead to whittling down the effectiveness of cross-examination of a witness and/or a party ?	Since we have held that a party cannot be equated with a witness in the matter of applying the provisions of VII Rule 14 (4); Order VIII Rule 1-A(4) and Order XIII Rule 3 of C.P.C, the observations made in Purushottam s/o Shankar Ghodgaonkar (supra) and Vinayak M. Dessai (supra), are correct and would not lead to whittling down the effect of cross-examination of a witness. Even if the witness was a party to the suit, what has been held in Purushottam s/o Shankar Ghodgaonkar (supra) and Vinayak M. Dessai (supra) would equally hold good.

13 Having regard to the legal position made clear by the Division of this Court in the case **Mohammed Abdul Wahid S/o Late Dr. Mohammed Abdul Aziz Vs. Smt. Nilofer Wd/o Dr. Mohammad Abdul Salim and another** (supra), the impugned order cannot be said to be defective in the eye of law. The Deputy Charity Commissioner has rightly considered the facts of the case and the provisions of the

Code of Civil procedure and allowed the production of documents in order to resolve the dispute once for all without leaving any scope for further litigation. It is rightly observed by the learned Deputy Charity Commissioner that the documents are already in existence. Those documents are sought to be produced before the authority. Mere production would not cause harm to the opposite side. The view taken by the learned Deputy Charity Commissioner, Aurangabad Region, Aurangabad while allowing the application for production of documents found to be proper, correct and legal in the background of the decision of the Division of this Court in the case ***Mohammed Abdul Wahid S/o Late Dr. Mohammed Abdul Aziz Vs. Smt. Nilofer Wd/o Dr. Mohammad Abdul Salim and another*** (supra), which is relied by the learned Deputy Charity Commissioner. Moreover, it is made clear by the learned Deputy Charity Commissioner, Aurangabad while passing the operative part of the order that the point of proof of documents according to law is kept open. As such, no prejudice seems to have been caused to the petitioner. I do not find any merit in the petition. Hence, the following order is passed:

ORDER

- I. The writ petition stands dismissed.

II. No order as to costs.

III. Rule discharged.

[SHRIKANT D. KULKARNI, J.]

14 At this stage, Mr. Vivek Dhage, learned Advocate for the petitioner submitted that he intends to challenge the judgment passed by this Court today before the Apex Court and urged to grant stay to the judgment at least for a period of four weeks.

15 Mr. S. S. Kulkarni, learned Advocate for the respondents opposed to grant stay. He submitted that at the most, two weeks time may be granted, which may be sufficient.

16 I have considered the submissions of the learned Advocates for both the sides. The judgment delivered by this Court in this petition is stayed for a period of three weeks from today.

[SHRIKANT D. KULKARNI, J.]