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

WRIT PETITION NO.8733 OF 2021
WITH
CIVIL APPLICATION NO.1642 OF 2022

RATNAKAR EKNATHRAO SURALE
VERSUS
SYED BAHAUDDIN NEHRI SYED MAZHARUDDIN NEHRI
...
Mr R. G. Joshi, Advocate for petitioner

CORAM : SMT. BHARATI DANGRE, J.

DATE : 25th February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner.

The petition is filed being aggrieved by the order passed below Exh.221, filed by the defendant, seeking permission to cross-examine the plaintiff and this application is rejected.

2. The plaintiff in the original suit is one Shri. Syed Afzaluddin Nehri and he filed a suit for declaration in respect of cancellation of sale deed and perpetual injunction. The petitioner was impleaded as defendant in the said suit and on being summoned, he appeared and filed his written statement. The

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plaintiff lead and closed his evidence, while evidence of the defendant was being recorded, the original plaintiff died.

3. One Syed Bahauddin Nehri filed an application seeking permission to bring him on record as Mutawali, substituting the original plaintiff. The said application was opposed by the defendant and the Trial Court, on 20/04/2018, granted the said application.

4. Being aggrieved by the said order, the petitioner approached this Court by instituting Writ Petition No.8457/2018 and the Court recorded that the substitution has been granted by the impugned order and by making following observations, the writ petition was disposed of :-

“3. The learned counsel for the petitioner sought to advance various contentions on merits. However, the impugned order will have to be read only as an order substituting the plaintiff. Since the sit has not yet reached the stage of argument, all contentions of the petitioner on merits including the nature of the property are open to be urged. It is also open to the petitioner to make an application to the learned Civil Judge to cross examine the respondent.

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4. *In view of this position and since the arguments of the petitioner on merits are open, it is not necessary to interfere in the writ petition which is accordingly disposed of.”*

Thus, under the orders of the High Court, the substitution of original Mutawali came to be granted.

5. The petitioner (original defendant), thereafter moved an application below Exh.221, seeking permission to cross-examine the plaintiff and this application was opposed by the newly substituted Mutawali. The learned Judge simply construed the order of the High Court passed in the writ petition, reserving liberty to the petitioner to make an application if necessary. However, the Court recorded that, since there is no examination-in-chief even either of the original plaintiff or of the substituted plaintiff and as the plaintiff has closed his case long back in the year 2011, there is no question of cross-examining the plaintiff.

6. The reasoning of the learned Judge being logical, do not warrant any interference, since in clear terms, he has recorded that the plaintiff has chosen not to examine themselves which include the original plaintiff and the substituted plaintiff i.e. the plaintiff who has been substituted at a later stage on the death of the

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original plaintiff. In this case, there is no question of opportunity of cross-examination being granted to the defendant.

In the wake of the above, by upholding the impugned order, the writ petition is dismissed. The civil application is also disposed of.

(SMT. BHARATI DANGRE, J.)

sjk