

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15477 OF 2019

SUBHASHCHANDRA VISHWANATH PANDE THROUGH LRS AARTI
SUBHASHCHANDRA PANDE AND OTHERS
VERSUS
LAXMIKANT TUKARAM CHAUDHARI

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Advocate for Petitioners : Mr. Anand Deshmukh
Advocate for Respondent: Mr. Girish Wani

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th JULY, 2022

ORDER :

. The petitioners are aggrieved by the judgment and order passed by Civil Judge, Junior Division, Jalgaon, below Exhibit-51 in Regular Civil Suit No. 243/2010, thereby rejecting the application filed by the petitioners.

2. Respondent/plaintiff filed Regular Civil Suit No. 243/2010 for decree of possession of suit premises. The petitioners/defendants appeared in the suit and resisted the claim of the plaintiff. The plaintiff thereafter filed his affidavit in lieu of examination-in-chief on 08.04.2019. After filing the same defendants presented certain documents. The plaintiff thereafter filed additional affidavit of in-chief explaining the said

documents. The defendants objected to the same by filing application Exhibit-51. The Trial Court rejected said objection application. Hence, the present petition.

3. Heard the learned advocate for the petitioners and learned advocate for the respondent.

4. The learned advocate for the petitioner by relying on Satish Kumar Gupta Vs. State of Haryana and Others (2017 (4) SCC 760) strenuously submits that additional evidence cannot be permitted. The Trial Court has committed an error in allowing the respondent to file additional affidavit of in-chief, and, therefore, impugned order needs to be quashed and set aside by allowing the writ petition.

5. The learned advocate for the respondent on the other hand supported the impugned order contending that filing of additional affidavit of in-chief does not amount to leading additional evidence. In support of his submission he relied on Digambar Ramchandra Bawaskar Vs. Soma Prabhu Pawar and Others (2018 (1) Mh.L.J. 169) and Rajesh Varma Vs. Aminex Holdings and Investments and Others (2008 (3) Mh.L.J. 460).

6. It is not in dispute that after filing of affidavit in lieu of examination-in-chief by the plaintiff, defendants have filed certain documents on record. The plaintiff therefore, filed additional affidavit in lieu of examination-in-chief explaining said documents. The cross examination of the plaintiff is yet to begin. In that view of the matter, it cannot be said that the plaintiff has led additional evidence. In the impugned order the Trial Court has observed that additional affidavit of in-chief is filed by the plaintiff for explaining documents filed by the defendants. Said additional affidavit is not beyond the pleadings of the plaintiff. By permitting the plaintiff to file additional affidavit of in-chief, no prejudice is likely to be caused to the defendants. The defendants have right to cross examine the plaintiff. Hence, the Trial Court has rejected the application filed by the defendants.

7. In *Satish Kumar Gupta* (supra), the Hon'ble Apex Court has held that, additional evidence cannot be permitted to fill in the lacunae or to patch-up the weak points. This ratio does not help the case of the petitioners as in the present case it cannot be said that additional affidavit of in-chief is filed by the plaintiff to fill in lacunae or to patch-up weak points. The same was necessitated as the defendants filed documents after

affidavit in lieu of in-chief is filed by the plaintiff.

8. In *Digambar Bawaskar* (supra) by placing reliance on *Rajesh Varma* (supra), this Court has held '*It may be permissible for the deponent to file a further affidavit, since Order XVIII Rule 4 does not limit itself to a single affidavit, and although there is some authority for the proposition that a witness may not continuously file fresh affidavits to keep improving his case, the view of our court is somewhat different, viz., that there is no impediment to the taking of additional Examination-in-Chief or the filing of a further or additional or supplemental Affidavit in lieu of Examination-in-Chief.*'

This ratio supports the case of the defendants.

9. No illegality or perversity is found in the order impugned in the present petition. The petition being devoid of substance is dismissed.

[NITIN B. SURYAWANSHI, J.]