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

WRIT PETITION NO.13582 OF 2021

USHA SOPANRAO SURYAVANSHI, THROUGH HER G.P.A.
HOLDER SOPANRAO RAMRAO SURYAVANSHI
VERSUS
SHAIKH HASHAM SK. GAFOOR PATEL

...

Mr A. R. Kawade, Advocate for petitioner;
Mr A. D. Kasliwal, Advocate for respondent

CORAM : SMT. BHARATI DANGRE, J.

DATE : 25th February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

The petitioner is aggrieved by the order passed below Exh.56, moved by him in Regular Civil Suit No.1006/2013, seeking examination of further witnesses along with a list of witnesses being forwarded to the Court.

2. The petitioner is the original plaintiff, who has filed Regular Civil Suit No.1006/2013 before the learned 8th Joint Civil Judge Junior Division, Aurangabad, for seeking an injunction and praying for damages. The defendant appeared in the suit and filed

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written statement and traverse the pleading in the plaint. The issues were framed and the suit was ready for evidence. The plaintiff examined for General Power of Attorney and her cross-examination was also over. After that, an application came to be filed vide Exh.56 for examining the further witnesses and two witnesses were sought to be examined and the application moved on 27/09/2021, which reads thus :

“That, the plaintiff has examined her P.O.A., in view of the fact and evidence that has come on record, it is essential to examine following witness who shall give evidence about title and possession of plaintiff.

One of the witness is vendor of plaintiff and another is cultivator of land. Both these witnesses are on the point of possession of suit land and fraud played by defendant. Their evidence is very essential and necessary for the decision of suit.

Therefore, it is prayed that, plaintiff be permitted to examine witnesses mentioned the list given with this application.”

However, the list accompanied the said application contains names of three witnesses.

3. This application was vehemently opposed by the defendant by submitting that after cross-examination of the Power of Attorney holder, witness of the plaintiff, the application is filed and attempted to fill up the lacunas in the evidence, which has come on record in the

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cross-examination. Further relying upon Order XVI Rules 1 and 2 of the Code of Civil Procedure, course adopted was objected to.

4. Perusal of the application would reveal that the plaintiff has failed to make out any case justifying the Court to permit the examination of additional witnesses, who were not cited in the list of witnesses, which is contemplated as per the Order XVI Rule 1 of the Code of Civil Procedure.

5. Sub-rule (3) of Rule 1 vests power in the Court to grant a permission to a party to call a witness, whose name is not included in the list, if the party shows sufficient cause for omission to mention name of such witness in the list.

The circumstances justifying exercising of powers under Sub-rule (3) of Rule 1 of Order XVI of the Code of Civil Procedure, would therefore have to be looked into the application. When the application filed by the plaintiff, to which a reference is made above is perused, it completely lack any reason being offered for omission to mention names of the witnesses at the initial stage as contemplated under the Rule 1 of Order XVI of the Code of Civil Procedure.

Moreover, this application is made at the stage when the witnesses of the plaintiff i.e. Power of Attorney is already examined

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and an attempt is now made to fill up the lacunas in the cross-examination.

6. Considering this and particularly when no case was made by showing sufficient cause for omission to mention the names of the three witnesses, who were sought to be examined, the learned Civil Judge Junior Division, Aurangabad, rejected the application on 13/10/2021 by a reasoned order. He has rightly placed reliance of this Court in case of **Anil Ramesh Bhusari Vs. Bhaskar Ramesh Bhusari & ors., 2015 (1) ALL MR 724.**

7. I do not find any legal infirmity in the impugned order and particularly in the wake of the fact that the proceedings in the suit were directed to be expeditiously disposed of and when made time bound and the learned Judge has therefore looked upon attempt on the part of the plaintiff to examine other witnesses as a tactic to prolong the proceedings further. This ground also weighed in the mind of the Court, when it rejected this application.

In the wake of the above, by upholding the impugned order, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)