

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

WRIT PETITION NO. 14840 OF 2021

Jagdish Digambar Chaudhari

...Petitioner

Versus

Vaishali Sudhir Patil & Ors.

...Respondents

.....
Mr. C. K. Shinde, Advocate for the petitioner
.....

**CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 4TH, 2022**

PER COURT : -

1. Heard the learned Counsel for the petitioner, who is original defendant in the Reg. Civil Suit No. 229/2012 filed by the plaintiff for eviction of suit premises described in the plaint on the ground of *bona fide* requirement and also on the ground of availability of alternative accommodation to the defendants. In the said suit, the present petitioner along with its two brothers are impleaded as defendant nos. 2 and 3. In the wake of the contesting pleadings, the following issues were framed in the suit :-

- (i) Whether the plaintiff has been able to prove that the defendant is in arrears of rent?

(ii) Whether the plaintiff proved that she is in bona fide need of the premises?

(iii) Whether the plaintiff has proved that the defendants have occupied the premises at some other place than the one which they are occupying?

. Apart from these three core issues, some ancillary issues are also framed.

2. The plaintiff examined herself and was cross-examined on behalf of the defendants. The plaintiff also chose to cross-examine one Ramkisan Lalu Rathod, Supply Officer of Tahsil Office, Bhusawal who has been cross-examined by the Counsel for the defendants and by preferring an application vide Exh. 188, the defendants have sought recalling of this witness of the plaintiff for production of record from his office. This application is rejected under the impugned order passed on 04.12.2021 by the learned Judge, which is a cause for filing the present writ petition.

3. Pertinent to note that plaintiff witness no. 2 – Ramkisan Rathod has stepped into the witness box and deposed about the

Ration Card no. 529879, which was in the name of the father of the defendants - Shri. Madhukar Digambar Chaudhari. The said witness is examined by plaintiff to substantiate her claim that defendant nos. 1 and 2 had purchased a plot and constructed a house, and the suit premises are no longer needed for their residence. He further deposed that the name registered in the unit register is of Shri.Madhukar Digambar Chaudhari, being the head of the family and the said Ration Card was issued pursuant to an application and he exhibited the certified copy of the unit register which was compared with the original and brought on record.

. This witness came to be extensively cross-examined about the existence of the separate Ration Card or the bifurcation of the family of Shri. Madhukar Digambar Chaudhari, but the exhaustive cross-examination would reveal that except answering that he is not aware of any such changes, the witness do not spill any beans. He, however, admit that in the unit register, there are 26 units which are indicated but failed to give any details of the existing units.

4. Defendant no. 3 also entered in the witness box, and brought on record three independent ration cards (true copies) issued in favour of defendant nos. 1 to 3 by Tahsil Office, in order to

prove that they have been residing separately and defendant no. 3 is occupying suit house. During cross-examination of PW2, he deposed that he did not bring the original record relating to the three ration cards, issued in favour of defendant nos. 1 to 3 independently. It is the case of defendants that, that newly constructed house is property of defendant nos. 1 & 2 and defendant no. 3 continue to reside in suit house.

5. The defendants, by filing an application under Order XVIII Rule 17 of the CPC are seeking recall of the said witness, by pleading that the Supply Officer must be called upon to bring before the court, the records pertaining to the Ration Cards and he is ready to bear the costs and consequences for the witness being recalled.

6. The learned Judge record in the order, passed on such an application, that, during the cross-examination, it was open for the defendant nos. 2 and 3 to file original copy of the Ration Card but in absence of the same being produced on record, the witness of plaintiff who was cross-examined extensively, does not in any way take the case of the defendants further. The burden lies on the defendants to prove their own case or to rebut the case set up by the plaintiff and the defendants had already examined four witnesses.

The application therefore came to be rejected with liberty being granted to the defendant nos. 2 and 3 to produce original copy of the Ration Card on record.

7. I do not find any illegality in the said impugned order, particularly after going through the exhaustive cross-examination of the witness of the plaintiff. I failed to understand what benefit the defendants are going to reap out of the admission given by the plaintiff's witness, particularly when in the chief-examination he has deposed about a joint Ration Card in the name of the father of the defendants.

8. The reliance placed by the learned Counsel for the petitioner on the decision of Bombay High Court in the case of Mukund Iron Staff Association Co-op. Housing Society Ltd., Bombay Versus Vasant Ramchandra Patil (since deceased) through Legal Heirs Mrs. Sandhya Prashant Koli and others reported in (2015) 4 Mah LJ 855, which has expounded the scope of Order 18 Rule 17 of CPC in paragraph 14, in my considered opinion, is not of any support to the learned Counsel, since it has been clearly recorded that whether application which is preferred under Order XVIII Rule 17 is *bona fide* and whether any additional evidence oral or documentary

is sought to be brought on record which will assist the court to clarify the evidence on issues and will assist in rendering the justice, the application ought to be allowed and the court can always consider the application for leading additional evidence, provided, the same assist in rendering the justice.

9. The issue framed in the suit is particularly, whether the plaintiff has established that the defendants have obtained the premises somewhere else than the suit premises and the burden is upon the plaintiff to establish so and not upon the defendants. In the said circumstances, the cross-examination of the plaintiff's witness has not rendered any assistance to the defendants and even further re-examination and recalling of the witness will not in any way benefit the defendants.

10. In the aforesaid circumstances, since the impugned order do not suffer from any flaw or any material illegality, and hence, do not warrant any interference. Consequently, the writ petition is dismissed.

[BHARATI H. DANGRE]
JUDGE