

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

WRIT PETITION NO.604 OF 2022

**BHAUSAHEB MARUTI JANBHARE
VERSUS
NANASAHEB YAMAJI MOHITE**

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Advocate for Petitioner : Mr. Abhijit S. More

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JANUARY, 2022

PER COURT :

1. This petition is directed against the order passed by the learned Civil Judge, Junior Division, Karjat, Dist. Ahmednagar, below Exhibit-120 in Regular Civil Suit No.17/2012, thereby rejecting the application filed by the petitioner seeking permission to give additional evidence.

2. The earlier application Exhibit-95, seeking additional evidence, filed by the petitioner was allowed by the trial Court by a detailed order on 15-03-2019. The said order was questioned before this Court in Writ Petition No.5269/2019 and it was set aside by this Court by observing that :-

“6. I find that the Trial Court has failed to apply it's mind to the law applicable. When the recording of oral evidence of all parties was concluded, when no name of a new witness is mentioned in exhibit-95 and such name is

absent even from the list of witnesses, if tendered to the Court, the Trial Court should have been cautious as such conduct of the plaintiff amounts to manufacturing a witness and producing the witness in order to fill in the lacuna or deficiency after noting the oral evidence of the defendant.”

3. After passing of the above order, application Exhibit-120 came to be filed by the petitioner, giving names of the witnesses to be examined and seeking permission to produce additional evidence in respect of possession of customary way and in support of the sale deed. The trial Court rejected the application holding that similar the application filed by the petitioner earlier has been dismissed by this Court and therefore, the application is not maintainable in the light of the observations made by this Court in paragraph No.6 of the Writ Petition No.5269/2019 to the effect that “the conduct of the plaintiff amounts to manufacturing a witness and producing the witnesses in order to fill in the lacuna or deficiency after noting the oral evidence of the defendant”.

4. In support of the challenge raised, the learned advocate for petitioner places reliance on **K. K. Velusamy Vs. N. Palanisamy, Civil Appeal Nos.2795-2796 of 2011 [Arising out of SLP (C) Nos. 18211-18212 of 2010]**, wherein the Hon’ble Supreme Court has held that the Court can allow to produce a fresh evidence even when the evidence

was concluded and arguments are sought. However, in this ruling it is also held that, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

5. Admittedly, the petitioner has closed the evidence by filing pursis. It is, therefore, obvious that the application filed by the petitioner is to cover up the negligence or lacunae as has been held by this Court in earlier round of litigation. The trial Court was right in rejecting the application. There is no merit in the petition. The writ petition is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)