

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.7228 OF 2018****WITH****CIVIL APPLICATION NO.715 OF 2018**

Mrs. Mita Harish Sujan

.....Petitioner

Vs.

Mr. Minoo Ratanshaw Dastoor & Ors.

.....Respondents.

Mr. Rajesh A. Revankar i/by A.G. Revankar & Co. for the Petitioner.

Ms. Zenobia Irani/Nair a/w Mr. Prashant Tikare for the Respondent No.3.

CORAM : A. S. GADKARI, J.

DATE : 8th APRIL, 2022.

P.C.:-

By the present Petition, the Petitioner, original Plaintiff has impugned Order dated 21st November, 2017 passed below Exh-79 in R.A.E. Suit No.1244/1868 of 2009 thereby allowing the said Application preferred by the Respondent No.3, original Defendant No.3 for producing on record additional affidavit of examination-in-chief along with certain documents more specifically mentioned therein.

2 Heard Mr. Revankar learned counsel for the Petitioner and Ms. Irani learned counsel for the Respondent No.3. Perused record.

3 Record indicates that, the examination-in-chief of Respondent No.3 was concluded on 12th September, 2017 and the learned Advocate for

the Plaintiff/Petitioner, started cross-examination of Respondent No.3, who is DW-1 on the record of the Trial Court. The cross-examination was subsequently adjourned to 22nd September, 2017 at the request of learned Advocate for the Plaintiff (Petitioner herein). That, on 27th September, 2017, the Respondent No.3 filed an Application below Exh-79 seeking permission to take on record her additional affidavit of examination-in-chief along with certain documents. Petitioner filed her say on 4th October, 2017 to the said Application. The Trial Court by its impugned Order dated 21st November, 2017 has allowed the said Application.

Record discloses that, the Revision Application No.328 of 2017 preferred by the Petitioner against the present impugned Order dated 21st November, 2017 has been rejected by the Appellate Court of Small Causes at Mumbai, as not maintainable.

4 The aforestated chronology of events are admitted facts on record. What is surprising to note that, the Trial Court in the midst of the cross-examination of Respondent No.3, permitted her to file the said Application below Exh-79 and proceeded to decide it by its impugned Order dated 21st November, 2017.

Section 137 of the Evidence Act prescribes, firstly the examination-in-chief, then cross-examination of the witnesses and thereafter re-examination of a witness i.e. the examination of a witness, subsequent to the cross-examination by the party, who called him. Section

138 of the Evidence Act further prescribes Order of examination and Direction of re-examination.

5 In the present case, the procedure adopted by Respondent No.3 and permitted by Trial Court, is a novel procedure not specified in the Evidence Act.

 If the Respondent No.3, after leading her evidence or after recording her cross-examination wanted to support her statement therein by way of producing additional documents or certain documents in support of her contentions which have already been recorded in her cross-examination, was entitled to file an Application before the Trial Court seeking direction for re-examination of the said witness as per Section 138 of the Evidence Act.

6 It appears to this Court that, the Trial Court without following the process of examination as contemplated under Sections 137 and 138 of the Evidence Act, has in the midst of the cross-examination of Respondent No.3, allowed the said Application below Exh-79, which according to this Court is contrary to the Order of examinations.

 In view thereof, impugned Order dated 21st November 2017 passed below Exh-79 in R.A.E. Suit No.1244/1868 of 2009 is hereby quashed and set aside.

7 It is however made clear that, the Respondent No.3 will be entitled to file an Application for re-examination as may be permissible

under the provisions of law and in that event, the Trial Court would consider the said Application on its own merits without being influenced of the fact that, the impugned Order dated 21st November, 2017 below Exh-79 is set aside by this Court.

Writ Petition is allowed in the aforesaid terms.

8 In view of disposal of the Writ Petition itself, Civil Application No.715 of 2018 does not survive and the same is also disposed off.

All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed by
SANJIV SHARNAPPA
MASHALKAR
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