

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1645 OF 2022

1. Purushottam Jainarayan Harkanth,
Aged about 63 years, Occ. : Business.
2. Manish Purushottam Harkanth,
Aged about Adult, Occ. : Business.
3. Prafulla Purushottam Harkanth,
Aged about Adult, Occ. : Business.

All R/o. Jijamata Nagar, Rajde Plot,
Akot, Tah. Akot, Distt. : Akola.

..... **PETITIONERS**

...VERSUS...

1. Mayur Shyamsunder Harkanth,
Aged about 35 years, Occ. : Education,
2. Smt. Kanchan Shyamsunder Harkanth,
Aged about Adult, Occ. : Household.
3. Sau. Rupali Nilesh Biyani,
Aged Adult, Occ. : Household.
R/o. Jalana, Tah. & Distt. : Jalna (Marathwada).
4. Sau. Sonal Krushna Mantri,
Aged Adult, Occ. : Household.
R/o Amravati, Tah. & Distt. : Amravati.
All are presently R/o. Sarafa Line,
Near Kala Ram Mandir, Amravati,
Tah. & Distt. : Amravati.

..... **RESPONDENTS**

Mr. Jitendra R. Kidilay, Advocate for Petitioners.
Mr. A. B. Mirza, Advocate for Respondents 1 to 4.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th APRIL, 2022.**

ORAL JUDGMENT:

Respondents, who shall be collectively referred to as the plaintiff, have brought Regular Civil Suit 137/2018 against the petitioners seeking, *inter alia* decree for eviction.

2. PW-1 was examined on 23.02.2022 and was cross-examined. On the next date of the hearing i.e. 04.03.2022 the defendants preferred an application seeking permission to further cross-examine PW-1 on the premise that due to inadvertence certain importance suggestions/questions touching the defence remained to be put to the witness.

3. The learned trial Judge referred to some commentary made available by the counsel and on the premise that special circumstances will have to be made out for granting such permission, rejected the application. I note that the application seeking leave to further cross-examine the plaintiffs is filed promptly i.e. on the next date of hearing. Ultimately, while considering such applications, the paramount consideration must be that the truth must be unearthed and unfolded. An overly legalistic approach may not be appropriate always. I do not see any serious prejudice to the plaintiffs since there is no delay as

such in the trial. I also cannot accept the submission of the learned counsel Mr. Mirza that the attempt is to fill in the lacunae.

4. In my view the interest of all the stake holders can be protected by setting aside the order impugned and directing the defendants to conduct the cross-examination of PW-1 on 06.04.2022.

5. It is clarified that if the defendants do not cross-examine PW-1 on 06.04.2022, costs of Rs.25,000/- (Rupees Twenty Five Thousand) shall be deposited by the defendants in the trial court, which shall be paid to the plaintiffs.

6. The petition is disposed of in the aforestated terms.

JUDGE

NSN