

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

WRIT PETITION NO. 3948 OF 2022

Sultana Begum Sayyad Mushiroddin and ors Vs. Mohammad Faiyyaz Noor
Mohammad

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.R.Khapre, Advocate for petitioners
Mr. M.G.Sarda, Advocate for the respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 11/08/2022

1] Heard Mr. Khapre. Learned counsel for the petitioner and Mr. Sarda, learned counsel for the respondent.

2] The petition challenges the impugned order dated 6.4.2022, whereby the application to continue with the further examination in chief by the plaintiff has been allowed.

3] It is contended that the witness, namely Shaikh Wasim was summoned by the plaintiff for giving evidence on behalf of the plaintiff. The said witness was examined below Exh. 97 by recording his examination in chief. During the course of the examination in chief, it was found by the plaintiff that the said witness was not supporting him, therefore, an application below Exh. 100 came to be filed, seeking permission to cross examine the witness. This application has been rejected by the order

dated 2.1.2020. After the said rejection, the plaintiff has again called the witness for further examination in chief, which was objected to by the defendant contending that the stage of cross examination of the witness would only come after the examination in chief is over. The objection has been rejected by the learned trial court by the impugned order by permitting the plaintiff to continue with the examination in chief.

4] The provisions of Section 137 of the Evidence Act mandates the procedure in which the parties shall be examined and cross examined. The stage of cross examination of a witness by a party calling such witness would arise only when the examination in chief is completed and if it is found that the witness is not supporting to the plaintiff. In the instant case, admittedly Exh. 100 was filed by the plaintiff for the purpose of cross examination of the witness, which would indicate that the examination in chief stood concluded. When Exh.100 was rejected, the stage shifted to the cross examination of the said witness at the hands of the defendant and did not revert back to the stage of further examination in chief. Permitting the same would be clearly contrary to the mandate of Section 137 of the Evidence Act, in view of which the impugned order which does not consider this position, cannot be sustained and the same is hereby quashed and set aside.

(3)

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It is directed that the defendant shall now be permitted to cross examine the aforesaid witness of the plaintiff.

5] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit