

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

WRIT PETITION NO.3059/2021

Uttam Galva Metallica Limited Bhugaon, Wardha through its Assistant Manager

...Versus...

Nexus Minmet Merchandizing Pvt. Ltd. Through it's authorized person and
Managing Director and another

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

Court's or Judge's orders

Shri S.K. Bhoyar, Advocate for petitioner
Shri A.C. Mehadia, Advocate for respondent no.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/10/2022

1. Heard Shri Bhoyar, learned counsel for the petitioner and Shri Mehadia, learned counsel for the respondent no.2.

2. The petition challenges the order dated 08/03/2021 (pg.125) passed on the application below Exh.74 filed by the respondent/defendant under Order XVIII Rule 3 (a) of the Code of Civil Procedure (for short, "CPC", hereinafter), objecting to the recording of the evidence of PW-2, allowing the application on the ground that before the evidence of PW-2 the necessary permission in that regard was not taken.

3. Shri Bhoyar, learned counsel for the petitioner/plaintiff submits that since the suit has been filed

by the petitioner/company through both PW-1 as well as PW- 2, it was not necessary for seeking the permission under Order XVIII Rule 3-A of CPC as the same applies to the witnesses and not to the plaintiff. He, therefore, submits that the learned Trial Court in ignoring the distinction has erred in law.

4. Shri Mehadia, learned counsel for the respondents/defendants submits that the status of PW-2 is clearly that of a witness, as a result of which, in view of the non-compliance with Rule 3-A of Order XVIII of CPC, the evidence of PW-2 was not permissible. That apart, he submits that the evidence of PW-2 is intended to fill the lacuna on account of which also the same is not permissible, as it violates the mandate of Order XVIII Rule 3-A of CPC.

5. The provisions of Order XVIII Rule 3-A of CPC require that the party should appear before witnesses and in case the party desires to appear after the witnesses, the permission of the Court is required to be obtained.

6. A perusal of the plaint in this case would indicate that the suit has been filed by the company through PW-1 as well as PW-2, both of whom, have signed the plaint in pursuance to the Resolution dated 16/04/2014. Even the plaint has been affirmed by PW-1, which would indicate that the plaint has been filed, through the aforesaid two persons,

who are representing the plaintiff/petitioner. Since the plaint has been affirmed by PW-1, he has rightly been examined as the plaintiff. Even if the status of PW-2 is considered to be one who has also signed the plaint that does not deter from the fact that the plaint has been affirmed by PW-1. That would make the position apparent that PW-1 has been examined as plaintiff and therefore, subsequent examination of PW-2, can be said to be that of a witness for the plaintiff.

7. The submission that a lacuna is being sought to be filled in and an admission given by PW-1 is sought to be taken away by permitting PW-2 to place the certificate under Section 65-B (4) of the Indian Evidence Act on record, is incorrect for the reason that it is permissible, for the certificate under Section 65-B (4) of the Indian Evidence Act to be filed later in point of time, may be by another witness.

8. In that view of the matter, the impugned order cannot be sustained. The same is hereby quashed and set aside and the application below Exh.74 filed by the defendant/respondent is hereby rejected. The writ petition is allowed and disposed of accordingly. No order as to costs.