

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

Civil Appliation [CAW] No.2056 of 2021

in

Writ Petition No.5325 of 2019

Shaikh Abdul Gani s/o Shaikh Hussain & another

vs.

Bano Begam w/o Hafij Khan Pathan & others

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

Court's or Judge's Orders

Mr. J.B. Kasat, Advocate for the Applicants/Petitioners.

Mr. M.R. Joharapurkar, Advocate for Respondent No.1.

CORAM : MANISH PITALE, J.

DATE : 31st MARCH, 2022.

This is an application seeking permission to bring on record legal representatives of petitioner No.1, who expired on 04/02/2020, during pendency of the writ petition.

02] It is pointed out that the legal representatives Nos.1 to 3 need to be specifically brought on record, because petitioner No.2 and respondent No.3 in the writ petition are already on record.

03] For the reasons stated in the application, the same is allowed and the legal representatives of petitioner No.1, the details of whom are given in paragraph 3, are permitted to be brought on record. Petitioner No.2 is granted liberty to carry out amendment forthwith.

04] The application is disposed of accordingly.

Writ Petition No.5325/2019:

By this writ petition, the petitioners have challenged order dated 29/04/2019, passed by the Court of 11th Jt. Civil Judge Senior Division, Nagpur (hereinafter referred to as 'the trial Court'). By the said order, the trial Court has rejected an application (Exh.91) filed on behalf of original defendant Nos.1 and 3, seeking permission to lead further examination-in-chief for proving some documents.

02] In the application (Exh.91), it was pleaded that certain documents came to light, which are relevant to the controversy between the parties. It was also stated that the said documents were referred to in the written statement also. On this basis, it was submitted that since cross-examination of the defence witness No.1 was yet to begin, no prejudice would be caused to the other side and that, therefore, the application for leading further examination-in-chief ought to be allowed in the interest of justice. This application was opposed by the contesting respondent No.1 i.e. the original plaintiff and by the impugned order, the application was rejected.

03] Mr. Kasat, learned Counsel appearing for the petitioners submitted that an application for bringing on record documents was allowed. The instant application at Exh.91 was filed by the petitioners for permission to lead further examination-in-chief, in the context of the very documents that were permitted to be brought on record. It was submitted that the cross-examination of the defendant's witnesses was yet to begin and, therefore, there was no

prejudice likely to be caused to contesting respondent No.1, which the Court below failed to appreciate while passing the impugned order.

04] Mr. Joharapurkar, learned Counsel appearing for contesting respondent No.1 opposed the contentions raised in the present writ petition.

05] This Court has perused the impugned order. It is an admitted position that the cross-examination of the defendant's witnesses is yet to be begun. It is also an admitted position that the documents, in the context of which the petitioners sought to lead further examination-in-chief, were already permitted to be brought on record. In these circumstances, this Court is unable to understand as to why the trial Court rejected the application (Exh.91). The Court erred in proceeding on the basis that the procedure of recording evidence would be reversed, if permission was granted to the petitioner as per the prayer in the application (Exh.91).

06] The said observation of the trial Court is not in consonance with the admitted facts on record, since the cross-examination of the witnesses is yet to be begun and in the light of the aforesaid documents being placed on record, the trial Court could have permitted the petitioners to lead further examination-in-chief.

07] In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. The

application at Exh.91 filed on behalf of the petitioners is allowed in terms of the prayer made therein.

08] The trial Court shall now proceed expeditiously in the matter.

JUDGE

**sandesh*