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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10265 OF 2018

Ankush Mahatarji Olekar

PETITIONER

VERSUS

Laxman Maroti Pardeshi Through LRs and Others RESPONDENTS

.....
Mr. Anand P. Bhandari, Advocate for the petitioner
Mr. Kiran D. Jadhav, Advocate for respondent No.2,
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th JULY, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner has challenged order dated 8th June, 2018 passed by learned 4th Joint Civil Judge, Junior Division, Aurangabad below Exhibit-132 in Regular Civil Suit No. 767 of 2002, thereby directing the petitioner – plaintiff to remain present in the court for cross-examination.
2. The suit filed by the petitioner – plaintiff was initially dismissed. The Appellate Court has remanded the matter back to the Trial Court, with a direction that the defendants be permitted to file written statement to the amended plaint, within 15 days and on such filing of the pleadings, the Trial Court to frame

issues and extend opportunity to both the parties to lead their respective evidence and decide the case in accordance with law. The parties were directed to appear before the Trial Court on a particular date.

3. Accordingly, the plaintiff has amended the plaint and additional written statement is filed by the defendants. Thereafter, two additional issues are framed i.e. (1) *Whether the suit is within limitation?* And (2) *Whether this court has territorial jurisdiction to decide the present case?*

4. After framing of the said issues, the defendants moved application Exhibit-132 contending that the plaintiff has amended his plaint and the suit for perpetual injunction is converted into the suit for possession and accordingly the issues are recasted and the defendants want to cross-examine plaintiff's witness. This application is allowed by the Trial Court and the petitioner is aggrieved by this order.

5. Heard learned advocate for the petitioner and the learned advocate for respondent No.2. Perused the memo of the writ petition, documents annexed with it and the impugned order.

6. Learned advocate for the petitioner submits that the petitioner – plaintiff has chosen not to enter witness box after

the matter is remanded back to the Trial Court, therefore, he cannot be compelled to face cross-examination at the request of the defendants. By relying on Rule 17 of Order 18 the Civil Procedure Code, he submits that only the Court may recall and / or call the witness for examination and may ask question to said witness.

7. Learned advocate for respondent No.2, on the other hand, supported the impugned order and urged to dismiss the writ petition.

8. Rule 17 of Order 18 of the Civil Procedure Code provides that - "*Court may at any stage of the suit recall any witness, who has been examined and may (subject to law of evidence for the time being in force) put such questions to him as the court thinks fit.*" It is, therefore, clear that Rule 17 or Order 18 of the Civil Procedure Code recognizes the power of the Court to recall any witness and put questions to him. But the parties to the suit are entitled to cross-examine the witness, examined by the opposite party, so as to bring truth before the Court and to discredit the witness of the other party.

The Court can recall witness for further cross-examination, by resorting to section 151 of the Civil Procedure Code.

9. Admittedly, in the present case, additional issues are framed and though the plaintiff has chosen not to examine himself after remand, the defendant cannot be denied opportunity to cross-examine the witness of the plaintiff, particularly considering the fact that the suit for perpetual injunction is now converted by the plaintiff into the suit for possession. In that view of the matter, fair and reasonable opportunity is required to be given to the defendant to cross-examine the witness of the plaintiff, to test veracity of the witness and demolish case of the plaintiff and / or prove his own case.

10. The Trial Court has passed a reasoned order while allowing application Exhibit-132. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to exercise extraordinary writ jurisdiction. The writ petition being devoid of merit, is dismissed.

11. Since the suit is of the year 2002, hearing of the same is expedited.

[NITIN B. SURYAWANSHI]
JUDGE