

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1208 OF 2020**

Cyrus Keki Balsara)
Age 55 years, Occupation : Business)
Sole Proprietor of Pearl Soap Company)
Having place of business at Nos.2 and)
3, Kurla Industrial Estate, Nari Seva)
Sadan Road, L.B.S.Marg,)
Ghatkopar (West), Mumbai 400 086)Petitioner

Versus

1. M/s.Ghatlia Textile Engraving Works,)
a Partnership Firm registered)
under the Indian Partnership Act,)
1932 and having address at Gold)
Mohor Building, 2nd floor, 174,)
Princess Street, Mumbai 400 002.)

2. M/s. Ghatlia Reeds Manufacturing)
Works, a Partnership Firm registered)
under the Indian Partnership Act,)
1932 and having address at Gold)
Mohor Building, 2nd floor, 174,)
Princess Street, Mumbai – 400 002.)

3. M/s. Naresh Amita Electroplaters)
a Partnership Firm registered under)
the Indian Partnership Act, 1932)
and having address at Gold Mohor)
Building, 2nd floor, 174, Princess)
Street, Mumbai -400 002.)Respondents

Mr. Vishal Kanade along with Ms. Shlesha Sheth and Ms. Kalyani Deshmukh i/b.FZB & Associates, Advocates for the Petitioner.

Mr. Girish Godbole, Senior Advocate with Mr. Atharva Dhandekar i/b.Dastur Kalambi & Associates, Advocate for the Respondent Nos.1 and 2.

CORAM : S. G. DIGE, J.

DATE : 6th MARCH 2023.

Judgment :

1. Rule. Rule made returnable forthwith. By consent of the parties, the matter is taken up for final hearing.

2. By this writ petition, the petitioner has assailed the order passed by the Small Causes Court, below Exhibit-140. By the impugned order, learned trial court has rejected the application filed by the petitioner to exclude the portion of oral examination-in-chief of DW1 witness - Absar Shaikh dated 27th August, 2019. It is

contention of learned counsel for the petitioner that summons was issued to this witness only to examine in respect of the documents. So it was expected from this witness to give evidence in respect of the documents only. But, this witness has given evidence in respect of other facts of the case and if the plaintiff cross-examines this witness, it would be open the line of cross-examining of the plaintiff, yet the plaintiff has to cross-examine defendant Nos. 1 and 2, who are the contesting parties. Hence, the petitioner had filed an application before the trial court asking relief that objected portion of his examination-in-chief be excluded from the examination-in-chief as these portions were not relevant as well as not concerned with the documents mentioned in the witness summons, but the trial court without giving any reasoning on it, has passed the impugned order.

3. It is the contention of learned counsel for respondent Nos.1 and 2 that respondent Nos. 1 and 2 had filed an application to examine other witnesses before the defendant No.1-witness but it was opposed by the petitioner. Moreover when the recording of examination-in-chief of DW1 started before the trial court, it was not opposed by the petitioner and after examining certain portion, the

petitioner is seeking exclusion of some portion of his examination-in-chief. Learned counsel further submits that when the petitioner did not oppose for issuance of witness summons as well as did not oppose while recording examination-in-chief of DW1, then, the petitioner has no right to object the portion of examination-in-chief.

Learned counsel further submits that DW1 appeared before the trial court after issuance of witness summons, so his examination-in-chief is relevant with the issuance of witness summons and relevant documents. The plaintiff/petitioner has filed suit in the year 2003 and, since then, he wants to prolong the suit on one or the other pretext by filing various applications.

Learned counsel relied on the decision of the Hon'ble Apex Court in the case of **Bipin Shantilal Panchal versus State of Gujarat 2001 (3) SCC 1**. Learned counsel further submits that as per the view of the Hon'ble Apex Court, at the most, the objected portion of the petitioner can be marked as objected portion. The petitioner can examine the witness on that portion and legality of that portion can be decided at the time of final hearing of matter.

4. I have heard both learned counsel, perused impugned

order. Admittedly, DW1 is called as witness on witness summons. Part of his examination-in-chief is recorded. The petitioner has objected certain portion of examination-in-chief of this witness, which is mentioned at page 48 of writ petition. As per the view of the Hon'ble Apex Court in the case of **Bipin Shantilal Panchal (Supra)**, if the portion of examination-in-chief of DW1 is marked as "objected" and petitioner cross-examined this witness on the objected portion and direction is given to the trial court to decide the legality of this portion at the time of final hearing, it would meet the ends of justice.

5. In view of above, I pass following order:

ORDER

1. Writ Petition is partly allowed.
2. The Trial Court shall record the objected portion of examination-in-chief of DW1 as mentioned by the petitioner and permit the petitioner to cross-examine DW1 on this portion.
3. The Trial Court shall decide the legality of this objected portion at the time of final hearing.

4. Contentions of both the parties are kept open.

The writ petition stands disposed of.

5. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)