

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9055 OF 2023

Smita Sachin Desai

...Petitioner.

Versus

Venkatesh Dhondo Kulkarni

..Respondent.

Mr. Omar Khaiyam Shaikh for the petitioner.

Mr. Nitesh Nevshe for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : August 9, 2023.

P. C. :

1. Heard.
2. The challenge in the petition is the order dated 22nd March 2022 passed below Exhibit 63 and the order dated 24th January 2023 passed below Exhibit 68. Vide order dated 22nd March 2022, the trial Court rejected the petitioner's application for permission to recall the plaintiff for cross examination. By order dated 24th January 2023, the second application was filed seeking recall of the plaintiff for cross examination again, which came to be rejected giving rise to the present petition.
3. Learned counsel appearing for the petitioner submits that the first application below Exhibit-63 was rejected on the ground that the

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application was bereft of any details. He would further submit that the second application below Exhibit-68 was filed placing all the necessary facts on record for the purpose of seeking recall of the plaintiff for cross-examination. He would further submit that the issues which were framed in the present proceedings cast burden upon the respondent and not upon the petitioner. He would urge that in the interest of justice the application be allowed as the issue is as regards the damages which has been caused to the reputation of plaintiff and the documents with which the plaintiff is sought to be confronted are relevant to the issue of reputation of plaintiff.

4. *Per contra*, learned counsel appearing for the respondent submits that the evidence of plaintiff was over on 13th February 2015 and the second witness of plaintiff was examined on 20th March 2017. He would further submit that on 12th February 2018 the petitioner's advocate was present and on 7th December 2019 the plaintiff had closed the evidence and the matter was listed for the evidence of defendant. He would further submit that the defendant did not lead any evidence and at the stage of final arguments, the present application is being filed.

5. Considered the submissions.

6. The first application which was filed by the petitioner seeking recall of the plaintiff for cross examination was an application which

was bereft of any details. In the said application, it was merely stated in order to achieve the ends of justice, the documents are necessary to come before the Court and the same be admitted in evidence and as such it is necessary to recall the plaintiff for cross examination. It is pertinent to note that this application was filed on 25th October 2021 which came to be rejected by the trial Court vide order 22nd March 2022. There was no challenge to this order passed below Exhibit-63. Subsequently, after a period of almost 1 year, on 7th July 2022, the second application seeking recall of the plaintiff was again filed with certain details as regards the criminal as well as the civil proceedings which were filed against the plaintiff. Along with that application, the list of documents was filed pertaining to various proceedings. The trial Court by the impugned order dated 24th January 2023 took into consideration the earlier order passed below Exhibit 63 and observed that the evidence of plaintiff is already over and it is not the case that there is any ambiguity in the cross examination of plaintiff. There is no explanation forthcoming as to why the first application was filed in the year 2021 when the documents came to the knowledge of petitioner in the year 2018. At that point of time, the plaintiff was in the witness box and could have been confronted with the documents. After that application was rejected, on 22nd March 2022, the second application has been filed. The application again seeks the same

reliefs. Considering that the earlier order was not challenged, the subsequent application filed at Exhibit-68 was untenable. I do not agree with the learned counsel for the petitioner that the first application was rejected only on the ground that the application is bereft of any details. The trial Court while deciding the first application has observed that the object of Order-18 Rule-17 CPC is not to permit a party to fill up the lacuna in its evidence and that the application is totally silent as to what extent of certain new facts the defendant is in need to further cross examine the plaintiff by recalling him. Another aspect, apart from delay in filing the present application, is that the defendant has not led any evidence and it appears that by the present application, the documents which could have been produced through the witnesses of defendants, are now sought to be produced by seeking recall of the plaintiff. Considering that power under the provisions of Order-18 Rule-17 of CPC is not to be exercised in a casual manner, in my opinion, there is no infirmity in the impugned orders. The petition being devoid of merits, stands dismissed.

[Sharmila U. Deshmukh, J.]