

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4734 OF 2023

Janardan Maya Patil, Since
deceased through four legal heirs

...Petitioner

Versus

Veritas Infrastructure Development
Ltd. & Others

...Respondents

Mr. Rohit D. Joshi, for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 31ST JULY, 2023.

P.C.:

1. The challenge in the petition is to an interlocutory order dated 17th August, 2022 granting permission to the witness for re-examination for the purpose of getting the resolution/authority. Learned Counsel appearing for the Petitioner submits that defendant No. 1 was a company and the witness for defendant No. 1 company had not filed the authority letter/resolution permitting him to lead evidence. He would further invite the attention of this Court to the affidavit of evidence which has been filed in which it is admitted that the written statement was not filed by the said

witness Vividh Thakur but by Shashikant Pagaria and it was also admitted that there was no transaction which had taken place in respect of the suit property, in his presence but it was Shashikant Pagaria, who was present at the time of transaction. He would further submit that on 29th March 2022 the affidavit of evidence was filed and there was no explanation as regards the authority given to the witness to depose on behalf of defendant No. 1 company. He would further submit that by way of re-examination defendant No. 1 is seeking to produce additional affidavit which could have been earlier permitted by the provisions of Order XVIII Rule 17(A) which has since been deleted.

2. Considered the submissions. The power of this Court under Article 227 has been invoked against the interlocutory order of re-examination and permission to produce the document under Section 138 of the Indian Evidence Act, 1872. It is settled by the decision of the Apex Court in the case of *Rameshwar V/s State of M.P.*¹ that if the party who called the witness desires that an explanation is required for any matter in cross-examination. he can put the questions in the re-examination. The Apex Court has held that it is a misconception that the re-examination has to be confined

¹ (1999) 8 SCC 649.

only to the questions to be put for the purpose of explaining any ambiguity in the cross-examination.

3. In the present case from the cross-examination it appears that the question was put as regards the authority letter/resolution and the witness has deposed that he is ready to produce the resolution. The trial Court has held that the plaintiff will get an opportunity to cross-examine Vividh Thakur in respect of the documents. As regards the other contention that the witness Vividh Thakur has admitted that he was not present during the transaction and that the written statement was also not filed by him, the said contention is on merits of the case and is not required to be considered in the present proceeding.

4. Considering the decision of the Apex Court as well as the cross-examination in which the specific question was put as regards the production of the authority letter, no interference under Article 227 is warranted. In that view of the matter, the writ petition is devoid of merit and stands dismissed.

(SHARMILA U. DESHMUKH J.)