



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

WRIT PETITION NO. 4686 OF 2023

(BHAGWANT GANPAT HEND & OTH....VS.. GANPAT NAMDEO THORAT & OTH.)

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

Court's or Judge's orders

Shri Atharva S. Manohar, Advocate for Petitioners.
Shri A.J.Thakkar, Advocate for Respondent Nos. 1 and 2.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 24, 2023.

1. Heard.
2. Issue notice for final disposal to the respondents, returnable forthwith.
3. Learned counsel Shri A.J. Thakkar waives notice on behalf of the respondent Nos. 1 and 2.
4. It is pointed out that the respondent Nos. 3A to 3G and 4 are the formal parties and they did not contest the application filed by the petitioners and therefore, any order passed in this writ petition would be innocuous for them.
5. Accordingly, the matter is heard finally by consent of the petitioner and the respondent Nos. 1 and 2.
6. The application moved by the petitioner for recalling the plaintiff's witness for cross-examination, came to be rejected vide order dated 20/06/2023 passed below Exh.154 by the learned 2nd Joint Civil Judge Junior

Division, Akot in Regular Civil Suit No.45 of 2013, which is the subject matter of the present writ petition.

7. The application came to be rejected on the ground that there is a delay in moving the said application and the power under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure can be exercised sparingly and only in rare and exceptional circumstances, which the petitioners failed to point out. The Court has further observed that the P.W.3 was thoroughly cross-examined by the petitioner/ defendant and therefore, recall of witness P.W.3 is not necessary.

8. The learned counsel for the petitioners has further pointed out that on 25/11/2022 the suit was amended and para No.5A was introduced and along with the same a plaint map was filed on record and this was done subsequent to the cross-examination by the petitioner in the month of January 2022.

9. It is also pointed out that after the amendment was carried out by the plaintiff, the matter was fixed for leading evidence and cross-examination. It is therefore, submitted that, in the above referred backdrop, denying the permission to further cross-examine the witness (P.W.3) is prejudicial to the interest of the petitioners.

10. It is pointed out that the trial Court has categorically observed that the application moved by the petitioner does not seem to be the delaying tactics. He,

therefore, submits that the petitioner/defendant shall get an opportunity to further cross-examine the P.W. 3 in view of the subsequent events.

11. It is further pointed out that after the cross-examination since the relevant documents were supplied to the petitioners and after going through the same it was found that the documents are fabricated one and though there is no doubt that certain remedies are available for the petitioner for taking action against such fabricated documents, however, at the same time, equally it is necessary to cross-examine P.W.3.

12. On the other hand, the learned counsel for the respondent Nos. 1 and 2 has drawn attention of this Court to the cross-examination and submits that thorough cross-examination has been conducted and since the matter is fixed for arguments of the parties, this Court may not interfere with the order impugned.

13. It is further submitted that there is a delay of 1½ year in filing such application.

14. In light of the rival contentions of the parties, I have perused the record and the impugned order.

15. The plaintiff amended the plaint in the month of November, 2022, whereas the cross-examination of the P.W. 3 was conducted in January 2022. It appears that the plaint map was filed after the amendment. Thereafter

the matter was time to time fixed for recording examination-in-chief and cross-examination consequent to the amendment.

16. It further appears that after going through the documents supplied to the petitioner he came to know that there is change in the date and also some fabrication is made and in that view of the matter, the application was moved for further cross-examination.

17. In the circumstances, I am of the opinion that the petitioner shall get an opportunity to further cross-examine the P.W. 3. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 20/06/2023 passed below Exh.154 by 2nd Joint Civil Judge Junior Division, Akot is hereby quashed and set aside and thereby application Exh.154 is allowed.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE