



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

WRIT PETITION NO. 5350 OF 2023

(DIWANCHAND THARUMAL KEWALRAMANI..VS..MOIZBHAI BANDEALI(DEAD) THR. LRS. &
OTH.)

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

Court's or Judge's orders

Shri R.M.Sharma, Advocate for Petitioner.
Shri Vinay V. Sharma, Advocate for Respondents.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 01, 2023.

1. Heard.
2. The application moved by the respondents for re-examination of the plaintiff's witness-Huzefabhai Bandeali came to be allowed vide impugned order dated 14/08/2023, is under challenge in this petition.
3. The only apprehension expressed by the petitioner is that, because the application is vague and nothing is mentioned specifically what clarification the respondent wants to bring on record, the respondent may, bring new material on record while re-examining the witness, which is not permissible. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *K.K. Velusamy ..vs.. N Palanisamy*, reported in (2011) 11 SCC 275, wherein it is held thus :

“16. Neither the trial court nor the High Court considered the question whether it was a fit case for exercise of discretion under Section 151 or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.”

4. On the other hand, the learned counsel for the respondents points out that at the time of cross-examination a document i.e. Lease Agreement (Kiraya Patra), dated 15/04/2015 was produced and other litigations were referred to, which is recorded in paragraph 37 of the cross-examination.

5. It is submitted that for the purpose of clarification in relation to cross-examination, the witness can be re-examined. In support of his submission, he has placed reliance upon the judgment of the Hon’ble Supreme Court of India in the case of *Rammi ..vs.. State of M.P.*, reported in (1999)8 SCC 649, wherein the Hon’ble Supreme Court has held thus:

“17. There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved

through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when the ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

18. Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the Court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions.”

6. Thus, from the judgment cited by the learned counsel for the petitioner as well as the judgment cited by the learned counsel for the respondents, it is evident that the clarification of ambiguities in the cross-examination can be resolved by re-examination.

7. In the present matter, I do not find any substance in the above referred apprehension expressed by the learned counsel for the petitioner, for the reasons that the learned trial Court while allowing the application categorically held that “... *what is sought by the plaintiff is the explanation for the said document (Kiraya Patra) and the legal proceedings between the landlord and other tenants...*”. (sic.)

8. Thus, from the impugned order it is evident that for the specific purpose, as recorded in the impugned order, the re-examination is granted.

9. Moreover, the learned counsel for the respondent has also not pointed out anything beyond the findings recorded by the learned trial Court as regards the purpose for re-examination of the witness.

10. Accordingly, I do not find any reason to interfere in the present matter.

Hence, the Writ Petition is **dismissed**. No order as to costs.

JUDGE