

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

Writ Petition No.7070/2019

(Dnyaneshwar V Deepak and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Rahul Tajne, Adv for petitioner.

Mr. S.R. Deshpande, Adv for resp. Nos.1, 3 to 7.

CORAM : AVINASH G GHAROTE, J.

DATE : 08-03-2023

The petition challenges the rejection of the application to re-examine the plaintiff (PW-1) at Exh-78, which has been rejected by the impugned order dated 05-09-19 (pg 84).

2. It is the contention of Mr Tajne, learned Counsel for the plaintiff, that considering the nature of evidence and specifically cross examination of PW-1 regarding the will of the year 1998, there is a need for re-examination of the plaintiff in order to clarify an ambiguity arising in the evidence of PW-1. He relies upon the judgments of the Hon'ble Apex Court in the case of *Rammi alias Rameshwar vs State of M.P., (AIR 199 SC 3544)* (para 70) and *Geo-Group Communications INC vs IOL Broadband Ltd, 2010(3) All MR 958* (para 6), to contend that the admission given can always be explained. It is submitted that for that purpose, there is a need for re-examination of the plaintiff. A perusal of the evidence and

specifically cross examination of the petitioner/plaintiff (pg 73), would indicate that the petitioner was categorically aware of the existence of two wills one of the year 1993 and other of year 1998 by his father. The cross examination at page 73 indicates that the major portion of cross examination was in respect of will of the year 1993. Before the admission has been given in cross examination by the petitioner/plaintiff regarding the will of 1998, the petitioner/plaintiff was categorically asked two more questions regarding the will of 1998. Not only that the original of the will 1998, was in fact shown to him and upon perusal of the same he had admitted the signature of his father and two witnesses on this will. He has further admitted that the contents of this will were correct, whereupon it was given an Exhibit 76. It is this admission, which has been given in cross examination which is sought to be clarified by way of application for re-examination. In my considered opinion, in the light of what has been stated in para 17 of Rammi (supra), re-examination can be in respect of an ambiguity but not in respect of an admission specially given in cross examination on the basis of which the will in question in this regard dated 09-06-1998 has been exhibited. It is also material to note that the cross examination of PW-1 was closed on 26-06-19 and the application below Exh-78 came to be filed on 17-08-19, which would further indicate that application for re-examination has not been made immediately after the cross examination is over, but has been made nearly two months thereafter which also indicates that the application is an after thought.

3. I do not see any reason to interfere in the order impugned in this petition. The petition is therefore dismissed. No costs.

JUDGE

Deshmukh