



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

935 WRIT PETITION NO. 13238 OF 2019

Krushna s/o Limbajirao Kulte.

...Petitioner

Versus

1. Rajmati w/o Narhari Shelke,
2. Tulshiram s/o Narhari Shelke,
3. Vaijanta d/o Narhari Shelke,
4. Maroti s/o Narhari Shelke,
5. Narhari s/o Tulshiram Shelke

...

Advocate for the Petitioner : Mr. Syed G R

Advocate for Respondents No.1 to 4 : Mr. K. J. Suryawanshi

...

CORAM : R. M. JOSHI, J.

Dated : June 19, 2024

PER COURT :-

1. Petitioner / defendant No.2 in Regular Civil Suit No.191/2016 takes exception to the order dated 13/09/2019, passed below Exhibits 72 and 74.

2. Defendant No.2 filed these application for reopening of his evidence and recall witness No.3 i.e. Rajabhau Haribhau Shelke. Application Exhibit 72 indicates that it is the contention of defendant No.2 that without passing any order of proceeding without written statement against defendant No.1 and without closing the evidence of defendant No.1, the case cannot be proceeded further to the stage of arguments. In another application, it is sought to be contended that P.W.3 Rajabhau Haribhau Shelke examined by the plaintiffs is not real

Rajabhau but someone else has impersonated him.

3. Learned Counsel for the petitioner submits that since the objection is raised by defendant No.2 with regard to the P.W.3 being Rajabhau Shelke or not, the learned Trial Court ought to have allowed to recall this witness for cross-examination. It is his further submission that without passing any formal order of proceeding without written statement against defendant No.1, the matter could not have been proceeded to the stage of final argument.

4. Learned Counsel for the plaintiffs supported the impugned order.

5. The facts as they appear from the record indicate that plaintiff examined three witnesses and closed evidence by filing pursis. Thereafter, defendant No.1 stepped in the witness box and closed his evidence. If it is the case of the defendant No.2 that PW.3 examined by plaintiffs, he is not Rajabhau, but someone else has impersonated him, such plea ought to have been specifically raised in the application. Perusal of the application does not show as to

when the said alleged fact has come to the notice of these defendants. Having regard to the fact that the plaintiffs witnesses were examined earlier and defendant No.2 has also examined himself thereafter, as rightly held by the learned Trial Court, there is no substance in the said objection.

6. In so far as proceeding the matter for the final argument is concerned, the impugned order indicate that inadvertently the order of proceeding without written statement of defendant No.1 was not passed, however the said order is passed subsequently.

7. Having regard to these facts and circumstances, there is no substance to challenge to the impugned order. Hence, the petition is rejected.

(R. M. JOSHI, J.)

vj gawade/-.