

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 311 OF 2024

Dr. Rajendra Kishorilal Verma & Ors.

..... Petitioners

VERSUS

Dr. Pratapsing Narsingrao Pupala

..... Respondent

Mr.Bharat Joshi for the Petitioners.

Mr.Nirman Sharma i/b. Ms.Kavita A. Shah for the Respondent.

CORAM: RAJESH S. PATIL, J.

DATE : 9 JANUARY, 2024

P.C. :-

The present writ petition is filed by the original defendant challenging the impugned order dated 22 November, 2023 passed below application Ex.122 in eviction suit pending before the Small Causes Court at Mumbai.

2. The petitioner/original defendant preferred an application Ex.122 on 4 November, 2023 thereby seeking a direction to the plaintiff witness no.1 to answer the questions put to him on 26 June, 2023 in cross examination.

3. The suit is filed by the respondent/plaintiff for eviction on the ground of unauthorized construction, change of user, subletting in the year 2000. The sole plaintiff Dr.Pratapsingh Narsingrao Pupala filed his affidavit of evidence on 13 October, 2021. It is the case of the defendant that the said witness was cross examined by the defendant's advocate on 26 June, 2023 when certain questions were put forth to him, the PW No.1 was not answering the questions and his answer would be "I do not want to answer as it is not pleaded".

4. Learned advocate for the respondent/plaintiff has submitted to this Court that after the cross examination was recorded on 26 June, 2023, further cross examination of PW-1 continued on 31 July, 2023 and thereafter the matter was adjourned for further cross to 9 January, 2024. After the matter was adjourned on 31 July, 2023, the original defendant preferred an application on 4 November, 2023 seeking a direction to PW-1 to answer the questions put to him on 26 June, 2023 in cross examination. The said application was rejected by the Trial

Court by its order dated 22 November, 2023 by holding that as per the provisions of section 147 of the Indian Evidence Act, if any such question relates to a matter relevant to the suit or proceeding, the provisions of Section 132 shall apply thereto. Under section 148, the Court has to decide when the witness can be compelled to answer.

5. Taking into consideration, the cross examination recorded on 26 June, 2023 it can be seen that the PW-1 refused to give any answer due to certain reasons. It can be noted that the advocate for the defendant had not taken objection on that day in this regard. The cross examination further continued on that day. So also, the cross examination continued on 21 July, 2023. After the gap of around four months, the application Ex.122 was preferred. The defendant always has liberty to submit, regarding the PW-1 not answering the questions in cross and an adverse inference could always be drawn. On the basis of this reasoning, the application of the defendant was rejected.

6. I don't see any perversity in the impugned order dated 22 November, 2023. If the argument to the defendant is presumed to be correct, even then, the case of the defendant, will be covered under section 148 (4) of the Indian Evidence Act, 1872.

7. There is no merit in the writ petition. Hence, writ petition is rejected.

8. The hearing of the R.A.E. Suit No. 647/1072 of 2000 is hereby expedited.

[RAJESH S. PATIL, J.]