



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

WRIT PETITION NO.752 OF 2024

Beniprasad S/o Kanhaiyalal Kabra through LRs .Vs. Smt. Jyotiprabha W/o
Rameshchand Jain

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Palash Chakole, Advocate for petitioners.
Shri V.V. Bhangde, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 20/02/2024

1. The order below Exh.102 denying the prayer of the petitioners to recall PW-1 for cross-examination, is under challenge in this writ petition.

2. The petitioners are the legal heirs of the original defendant who died during the pendency of the suit and after bringing the legal heirs of the petitioner on record they amended the written statement pointing out that, the plaintiff and her family members are in possession of certain properties and as such, she has alternate accommodations to fulfill her bonafide requirement.

3. The defendant therefore, wanted to cross-examine on the said point.

4. The learned trial Court rejected the said request for recalling PW-1 for cross-examination and observed that, if such permission is granted, it would amount to try the suit de-nova which is not the purport of Order XXII, Rule 4 of the Code of Civil Procedure.

5. Even otherwise, I am of the opinion that, to establish the fact that, the plaintiff is in possession of certain properties, which would suffice the bonafide requirement of the plaintiff, the other modes are available to prove the said fact including, the defendant to enter into the witness box to establish his above referred case.

6. Be that as it may, the reasons recorded by the learned trial Court are found to be just and proper and no needs no interference.

7. In the circumstances, the judgment cited by the learned counsel for the petitioners in the case of *Muddasani Venkata Narsaiah (Dead) through legal representatives ..vs.. Muddasani Sarojana*, reported in (2016) 12 SCC 288 and in the case of *Arvind Singh ..vs.. State of Maharashtra*, reported in (2021) 11 SCC 1, are of no assistance as in both the cases the issue was not in respect of recalling the witness but it was on the point of importance of the cross-examination.

Accordingly, the writ petition is **dismissed**.

8. At this stage, Shri Bhangde, learned counsel for the respondent submits that, the suit is of 2013 and he therefore, prays for expediting the matter.

9. Accordingly, the learned trial Court is directed to expedite the suit.

JUDGE