



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

WRIT PETITION NO.6053 OF 2023

(Devendra S/o Shudhakar Bhoyar Vs. Gajanan S/o Parasram Matte and others)

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

Court's or Judge's orders.

Mr. T. S. Deshpande, Advocate for Petitioner.
Mr. S. S. Bhalerao, Advocate for Respondent No.1.

CORAM: ANIL L. PANSARE, J.

DATE: 15th JULY, 2024.

Heard.

2. The petitioner/defendant is aggrieved by the action of the Court which permitted the re-examination of respondent/plaintiff (witness).

3. Prior to cross-examination of plaintiff, the plaintiff had filed application seeking to rely upon some documents of which the disputed document is notice of *lis pendens*.

4. The Court, out of the documents so relied upon by the plaintiff exhibited two documents but not the disputed documents viz. notice of *lis pendens*.

5. The defendant however, in cross-examination brought on record that pending suit, the plaintiff has registered notice under Section 52-A of the Transfer of Property Act. Having done so, the plaintiff in re-examination deposed that the notice under Section 52-A so registered,

being document necessary to effectively decide the suit, be exhibited. Accordingly, the said notice was executed. The learned trial Court then permitted defendant to cross-examine the plaintiff.

6. The learned counsel for the petitioner/defendant submits that the scope of the re-examination is extremely limited. The trial Court therefore, ought not to have permitted the plaintiff to re-examine the witness.

7. I do not find substance in the argument to the extent that the trial Court ought not to have permitted re-examination of plaintiff. Once the defendant himself has brought on record that notice under Section 52-A of Transfer of Property Act was registered with the appropriate office, there appears no reason why should the notice be not exhibited, particularly, considering the fact that suit under question was for specific performance of contract.

8. The counsel for the petitioner has relied upon the judgment passed by the Delhi High Court in ***Capital Art House (P) Ltd. v. Neha Datta*** wherein the Court relied upon its earlier judgment by which the Court held that re-examination, particularly in civil cases, has to be permitted rarely and should be confined to explanation of the sense and meaning of the expressions used by the witness in cross-examination, if they be in themselves doubtful and also the motive by which the witness was induced to use those expressions. The Court further held that re-examination, cannot be sought and allowed, with the sole object of giving a chance to the witness to undo the

effect of statements earlier made in cross-examination. The Court then held that the lacunae in evidence led cannot be filled up under the pretext of re-examination.

9. In the present case, one cannot really say that the re-examination of plaintiff has been permitted to undo the effect of his statement in cross-examination rather the re-examination is in tune with the cross-examination. What has been brought on record in cross-examination has been certified in the re-examination by pointing out to the Court that notice under Section 52-A of the Transfer of Property Act, having been placed on record, but not exhibited, ought to be exhibited in the light of what has been brought on record in the cross-examination. This evidence cannot be said to be permitting filling up of lacunae.

9. Thus, there is no substance in the petition, the petition is accordingly dismissed.

(ANIL L. PANSARE, J.)