



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

**WRIT PETITION NO. 7409/2019**

Ku. Madhavi d/o Madhukar Wasnik .vs. Anil Gangaram Mohod and Ors.

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

Court's or Judge's orders

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Mr. N. M. Shukla, Advocate for petitioner.  
Mr. C. A. Babrekar, Advocate for respondent No.1.

**CORAM : ANIL L. PANSARE, J.**

**DATE : OCTOBER 9, 2024**

Heard.

Challenge is to order dated 08.02.2018, passed by learned Civil Judge Senior Division, Amravati, by which the learned Judge has allegedly refused to permit the petitioner-original defendant No.5 to lead further chief-examination.

The petitioner has not challenged the said order immediately and took about nine months to file application seeking permission to file additional affidavit of chief-examination, without making any grievance that his request for further chief-examination has been refused by Court vide order dated 08.02.2018. In that sense, the petitioner has allowed the order dated 08.02.2018 to attain finality.

Be that as it may, the petitioner filed application seeking permission to file additional evidence i.e. further chief-examination, this time through affidavit. When inquired, the counsel for the petitioner is unable to state as to how would this be permissible, if his request to lead further chief-examination has been already refused by the Trial Court. Nonetheless, the

application proceeds on the footing that the petitioner-defendant No.5 has inadvertently not mentioned in his affidavit the fact as regards the health condition of petitioner's mother at the relevant time i.e. on or about 03.08.2006. The Trial Court has, vide order dated 05.08.2019 rejected the application on the count that the contents in the additional affidavit are beyond pleadings. The Trial Court further noted that the petitioner's application was not on the count of discovery of new facts or that the said fact was not within her knowledge, when affidavit of chief-examination was prepared. This order is also challenged by the petitioners.

As could be seen from the order impugned and further the argument was advanced by the learned counsel for the respondent that the petitioner intended to bring on record, by way of additional affidavit, the facts which were not pleaded in the written statement. Accordingly, a specific query was made to the learned counsel for the petitioner as to whether it is correct that by way of additional affidavit, evidence beyond pleading is being made. Further, the counsel was put to notice that costs of Rs.5,000/- will be imposed if the statement made is found to be incorrect. Despite such caution, petitioner's counsel maintained his stand that the contents of additional affidavit were in tune with the pleadings in the written statement.

Accordingly, the Court instructed the learned counsel to point out from the written statement, the pleadings that his mother was hospitalized or was not keeping well on or about 03.08.2006. He failed to point out the pleadings to that effect. It is thus evident, firstly that the petitioner has allowed the

order dated 08.02.2018 to attain finality and secondly filed application Exh.-103, to overcome the order dated 08.02.2018, which even otherwise was not permissible, apart from the fact that the additional affidavit contains the evidence that was beyond pleading. The learned Trial Court has, therefore, rightly rejected the application.

The petition is, accordingly, dismissed with costs of Rs.5,000/- to be deposited with Library of High Court Bar Association, Nagpur, within seven working days.

**(Anil L. Pansare, J.)**

Kahale