



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

Writ Petition No. 7717 of 2019

Mohammed Abdul Wahid S/o Late Dr. Mohammed Abdul Aziz ..vs.. Smt. Nilfer Wd/o
Dr. Mohammad Abdul Salim and anr.]

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

Court's or Judge's orders

Mr. Masood Shareef, Advocate for the petitioner
Dr. R. S. Sundaram, Advocate for respondent no. 1
Ms. Poonam Moon, Advocate for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 27-08-2024

The plaintiff – petitioner is aggrieved by order dated 4-11-2019 passed below Exhibit No. 332 by 16th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No. 766/2012 rejecting the request made by the plaintiff to file document which according to plaintiff was necessary to decide the controversy. The trial Court has rejected the application, mainly on three grounds : (1) the plaintiff failed to show relevancy of the document, (2) the application is silent as to how respondent no. 1 (original defendant no. 1) is concerned or conversant with the said document and (3) the witness cannot be confronted with the document as a surprise.

2. The issue as to whether document can be directly produced at the stage of cross-examination of a party and/or a witness to confront him/her without seeking any prior leave of the Court under Order 7 Rule 14(4), Order 8 Rules 1-A(4)(a) and Order 8 Rule 1(3)(a) of the Civil Procedure Code, 1908 has been now answered by the Hon'ble Supreme Court in the case of *Mohammed*

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in following terms.

“39. A reading of the judgments above would imply that substance is what the courts need to look into, and therefore, in reference to the production of documents, in the considered view of this court, so long as the document is produced for the limited purpose of effective cross-examination or to jog the memory of the witness at the stand is not completely divorced from or foreign to the pleadings made, the same cannot be said to fly in the face of this established proposition.

40. Save and except the cross-examination part of a civil suit, at no other point shall such confrontation be allowed, without such document having accompanied the plaint or written statement filed before the court. For this purpose, reference be made to Order 7 Rule 14(4) (this Rule speaks of the plaintiff necessarily listing in his plaint and, producing before the court, the documents upon which they seek to place reliance, in support of his claim. Sub-rule (4) exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness), Order 8 Rule 1-A(4)(a) (this Rule speaks of the defendant necessarily listing in his written statement and, producing before the court the documents upon which they seek to place reliance, in defence of his claim for set- off or counterclaim. Sub-rule (4) exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness) and Order 13 Rule 1(3) (this Rule speaks of either party or their pleaders obligatorily producing, post the settlement of issues in a suit, the documentary evidence upon which reliance is placed. Sub-rule (3) exempts from this obligation documents produced for the limited purpose of

cross-examination or to jog the memory of a witness), all three of which, while dealing with the production of documents, by the plaintiff, defendant and in general, respectively, exempt documents to be produced for the limited purpose of cross-examination or jogging the memory of the witness.

41. *In light of the above discussion, and the answer in the negative to the first question before this court, meaning thereby that there is no difference between a party to a suit as a witness and a witness simpliciter - the second issue in this appeal, in view of the provisions noticed above, production of documents for both a party to the suit and a witness as the case may be, at the stage of cross-examination, is permissible within law.”*

Thus, the Supreme Court has in clear terms held that the production of documents for both the parties to the suit and a witness at the stage of cross-examination is permissible in law.

3. In the present case, however, the trial Court has rejected the application on other grounds as well.

4. In the light of above, a specific query was made to the learned counsel appearing for the petitioner – plaintiff as to how the document under question is relevant, the learned counsel submits that the stage of relevancy has not yet come and could not be considered at this stage. According to him, to impeach the credibility of the witness, the petitioner ought to be permitted to confront the witness with the document. Thus, it is suggested that the relevancy of the document may be considered at later stage of the proceedings.

5. This argument has been rightly countered by the learned counsel appearing for respondent no. 1 by contending that once the Court has rejected the application on the ground that the petitioner failed to show relevancy of the document to decide the real controversy, permitting the petitioner to confront respondent no. 1 with the document will be a futile exercise.

6. The petitioner's case is that the issue involved in the suit is about validity of *Hiba* executed by the respondent no. 1's husband, by which the entire property has been allegedly gifted to respondent no. 1. The petitioner has challenged the *Hiba*. The handwriting expert on this point has been already examined. The petitioner intends to press in service the documents under question to further point out that *Hiba* has been not executed by the respondent no. 1's husband, who was Doctor by profession. The petitioner, therefore, intends to rely upon the prescriptions allegedly issued by respondent no. 1's husband. None of the documents, however, carries signature. In the circumstances, even if the documents/prescriptions is/are admitted, it would be of no help to decide whether the signature on *Hiba* is of respondent no. 1's husband because in absence of any signature on the documents under question, there cannot be comparison of the signature.

7. In that sense, I do not find any error in the impugned order rejecting the application. No interference,

therefore, is called for in writ jurisdiction. The writ petition is accordingly dismissed.

(Anil L. Pansare, J.)

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