



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

957 WRIT PETITION NO. 3390 OF 2023

SUSHIL JAVERILAL OSTAWAL AND ANOTHER
VERSUS
THE MUNICIPAL COUNCIL THROUGH ITS CHIEF OFFICER AND
ANOTHER

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Mr. Mahesh R. Sonawane – Advocate for Petitioners
Mr. S.D. Hiwrekar – Advocate for Respondent No.1
Mr. Ameet R. Vaidya – Advocate for Respondent No.2

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 10.12.2025

PER COURT :

1. Heard learned Counsel for the respective parties.
2. The petitioners assail the order dated 25.01.2023 passed below Exhibit 206 in Special Civil Suit No.61 of 2016 by the learned Civil Judge, Senior Division, Aurangabad, Dist. Aurangabad, whereby the said application filed by the petitioners for permission to re-examine the P.W. 4 and to put leading questions came to be rejected.
3. Learned Counsel for the petitioners submits that the evidence of P.W. 4, who was the Chief Officer, was recorded, however he did not produce the relevant record though the defendants had cross-examined him. Therefore, the petitioners filed an application for re-examination.

The learned Trial Court, while rejecting the said application, recorded a finding that there was no ambiguity in the chief-examination of the witness. Even with regard to the observations made therein, no ambiguity was found so as to grant permission for re-examination.

4. I have considered the submissions advanced by the learned Counsel for the parties and perused the findings recorded by the learned Trial Court. As the petitioners seek re-examination of their own witness and since, during the earlier chief-examination, no record was produced by the said witness. Being a public officer having proper custody of record, PW. 4 was supposed to produce the relevant record available with him for just decision of the suit. Without the production of the said record, the plaintiffs could not prove their case and calling him for the purpose of recording evidence would be fruitless. Therefore, I am of the opinion that the plaintiffs shall be entitled to re-examine the said witness with respect to the production of record.

5. In view thereof, the Writ Petition is allowed. The order dated 25.01.2023 passed below Exhibit 206 in Special Civil Suit No.61 of 2016 by the learned Civil Judge, Senior Division, Aurangabad, Dist. Aurangabad is quashed and set aside, subject to payment of costs of Rs.25,000/- (rupees Twenty Five Thousand only) by the petitioners to the Advocates' Bar Association Library, Bombay High Court, Bench at Aurangabad.

6. The petitioners shall deposit the costs within a period of two (2) weeks from today.

7. The learned Civil Judge, Senior Division, Sillod is directed to permit the plaintiff to re-examine P.W. 4 and thereafter, the defendants shall be permitted to cross-examine the said witness.

8. The entire exercise shall be completed within a period of three (3) months from today.

9. The petitioners shall take necessary steps for issuance of summons to respondent No.4.

10. The suit is of the year 2016 and it has been transferred to the learned Civil Judge, Senior Division, Sillod, and renumbered as Special Civil Suit No.87/2024, the said Court is directed to decide the suit within a period of one (1) year from today.

[SIDDHESHWAR S. THOMBRE]
JUDGE