



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 10952 OF 2019

Prayagabai Bansi Navthar And Another
Through Gpa Keshav Laxman Navthar

...Petitioners

Versus

Vasant Shankar Joshi

...Respondent

WITH
CIVIL APPLICATION NO. 10655 OF 2025
IN
CIVIL WRIT PETITION NO. 10952 OF 2019

- Mr. Deshmukh H.D., Advocate for the Applicant/Petitioner/Appellant
- Mr. Swapnil S. Patunkar, Advocate for the Respondent.

CORAM : R. M. JOSHI, J
DATE : SEPTEMBER 30, 2025

PER COURT :

1. This is a case wherein the respondent – plaintiff who filed affidavit in lieu of examination in chief wants his son to be cross-examined on his statements made on oath. Such request which was never sustainable in the law was accepted by the Trial Court and the Trial Court permitted the cross-examination of son of the plaintiff though he has not made any statement on oath.

2. The counsel for the petitioners submits that the order passed below Exhibit 22 permitting the cross-examination of son of the plaintiff is

wholly unsustainable. He drew to the attention of the Court to the application below Exhibit 22, who only states about his inability to appear before the Court. It is his submission that unless the person makes a statement on oath, the question of he being cross-examined does not arise. Moreover, merely filing of examination in chief would not amount to leading evidence unless the person is subjected to the cross-examination.

3. The learned counsel for the respondent – plaintiff sought to support the order by contending that already evidence of son of the plaintiff is recorded independently before the Trial Court and he is cross-examined too. It is his submission that having regard to the inability of the plaintiff to appear before the Court, the order passed by the Trial Court be maintained.

4. A perusal of the record indicate that the application Exhibit 22 came to be filed only for the reason that the plaintiff was unable to appear before the Court, owing to his alleged ailment. If it was so, it was open for the plaintiff to seek appointment of the Court Commissioner for recording his cross-examination. If any such prayer was made, it could have been contended by Trial Court. In stead, Trial Court permits cross-examination of the son of the plaintiff on the basis of his affidavit of examination in chief, which can't sustain for want of provision enabling Court to pass such order. The order passed by the Trial Court therefore deserve to be set aside.

5. In view of the above, the petition stands allowed. The Exhibit

22 filed before the Trial Court in RCS No.619 of 2017, stands dismissed. It is clarified that if the plaintiff fails to offer himself for cross-examination, his evidence be discarded.

(R. M. JOSHI, J.)