



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

944 WRIT PETITION NO. 13027 OF 2022

RAJARAM LAXMAN SALUNKE
VERSUS
BASWARAJ MALLIKARJUN NILA AND OTHERS

...
Mr. Gaurav L. Deshpande – Advocate for Petitioner
Mr. V.D. Gunale – Advocate for Respondent No.1

...
CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 03.12.2025

PER COURT :

1. Heard learned Counsel – Mr. Gaurav Deshpande for the petitioner and learned Counsel – Mr. V.D. Gunale for respondent No.1.
2. The petitioner challenges the orders dated 04.03.2022 passed by the Civil Judge, Junior Division, Chakur, in R.C.S. No.34/2013, whereby the application filed by original defendant/petitioner below Exhibit 32 came to be rejected and an application below Exhibit 33 filed by original plaintiff/present respondent No.1 came to be allowed thereby granting permission to the original plaintiff/respondent No.1 to file an affidavit of examination-in-chief.
3. The application below Exhibit 32 was filed only on the ground that the original plaintiff had not pressed his affidavit of examination-in-chief and consequently, an application was filed by original defendant seeking dismissal of the suit. Later, the original plaintiff filed application below Exhibit 33 for acceptance of his examination-in-chief.

4. I have considered the rival submissions advanced by the learned Counsel appearing for both parties and I have gone through the application below Exhibit 33 and order passed thereon. It reveals that the learned Trial Court has observed that merely because the plaintiff had not pressed the earlier affidavit of examination-in-chief, that by itself cannot be a ground to dismiss the suit and such a reason cannot justify dismissal of the suit. The defendant opposed the application on the ground that, once the plaintiff had already not pressed the earlier examination-in-chief, he could not be permitted to file a fresh affidavit of examination-in-chief.

5. Considering the averments made in the application below Exhibit 33, the examination-in-chief now filed is only an additional examination-in-chief and not a fresh one.

6. Therefore, I do not find any reason to interfere with the orders dated 04.03.2022 passed by the Civil Judge, Junior Division, Chakur, in R.C.S. No.34/2013 under Article 227 of the Constitution of India.

7. In view thereof, the Writ Petition is dismissed. No order as to costs.

8. It is made clear that the examination-in-chief which has now been accepted shall be treated as additional examination-in-chief and the earlier affidavit of examination-in-chief filed already shall form part of the record.

[SIDDHESHWAR S. THOMBRE]
JUDGE