



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15270 OF 2023

Omprakash Sitaram Agrawal

VERSUS

Badrinarayan Gaurishankar Palsani Since Deceased Lrs Rukhminbai
Badrinarayan Palsaniya And Another

Mr. A. P. Bhandari, Advocate for Petitioner

Mr. Girish Rave, Advocate for Respondent Nos. 1A to 1E

CORAM : R. M. JOSHI, J.

DATE : 03rd March, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Learned counsel for Respondents has drawn attention of the Court that Respondent No. 1A is reported dead on 28.02.2024. He, however, does not dispute that her LR's are already on record. Hence petitioner is permitted to delete her name from array of petitioners. Amendment be carried out forthwith.
3. This petition takes exception to the order dated 10.10.2023 passed below Exhibit 151 in Special Civil Suit No. 222/2009 whereby application filed by Defendant No. 1A to 1E for recalling of plaintiff for cross examination on the ground that the application for production of

document Exhibit 114 moved by plaintiff came to be allowed. Petitioner is plaintiff in Special Civil Suit No. 222/2009 filed for seeking specific performance of contract. The pleadings were completed and after framing of the issues, plaintiff entered into witness box. He was duly cross-examined. Cross examination by defendants was concluded. It is thereafter an Application Exhibit 114 came to be filed for production of documents. The said application was rejected by the Trial Court. Plaintiff has successfully challenged the said order in Writ Petition No. 9479/2022. This Court by order dated 20.07.2023 allowed application Exhibit 114. Pursuant to the said order, documents were produced before the Trial Court. At this stage, Defendant Nos. 1A to 1E filed Application Exhibit 151 for recalling plaintiff for his further cross examination to the extent of the documents produced. Trial Court allowed the application by passing impugned order with observation that the documents are produced by the plaintiff after conclusion of his evidence and, therefore, these defendants have right to cross examine the plaintiff.

4. Learned counsel for the Petitioner, at the outset, submits that the Order XVIII Rule 17 of the Code of Civil Procedure permits Court to cross examine the witness and put questions to him if it does fit. Thus, according to him the said provision cannot be invoked by the party for recalling of the witness. He has drawn attention of the Court to the cross

examination conducted by defendants wherein the questions were asked with regard to the documents which are now placed on record, and thus it is his submission that in view of the said cross examination, nothing survives for further cross examination of the plaintiff. In any case, it is his submission that the order passed by this Court in Writ Petition No. 9479/2022 would not be helpful for the defendants to support their contention for recalling of plaintiff as a witness for cross examination.

5. Learned counsel for the contesting respondents supported the impugned order.

6. There is no dispute about the fact that the Court has a power to recall the witness. Question is as to whether in the circumstances as they appear from the record, the order impugned is justified or not. There is no dispute about the fact that from the pleadings in the plaint, documents now produced on record are relevant for the proper/effective decision of the case. Perusal of the cross examination of the plaintiff indicates that when plaintiff was examined, these documents were not placed on record. Now, admittedly, pursuant to the order passed by this Court in Writ Petition No. 9479/2022 for production of documents is allowed. In such circumstances, principle of nature justice requires that documents which are produced after the conclusion of the evidence of the plaintiff, the defendants are given opportunity to cross examine the

plaintiff to the extent of the said documents. Learned trial Court has also passed specific order recalling plaintiff for cross examination to the extent of the documents produced along with application 114.

7. In the light of the facts involved in the present case, order passed by the Trial Court cannot be termed as perverse in order to cause interference in this petition.

8. Petition stands dismissed.

(R. M. JOSHI, J.)

bsj