



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7424 OF 2025

NAMDEORAO RAMANRAO PAWAR

VERSUS

MARATHWADA LEGAL AND GENERAL EDUCATION SOCIETY

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Mr. Namit Sunil Muthiyan, Advocate for the Petitioner.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 24th JUNE, 2025.

P.C.:-

1. Heard Mr. Muthiyan, learned Advocate appearing for petitioner.

2. The petitioner seeks to challenge order dated 13.02.2025 passed below Exhibit-76 in Rent Suit No.26/2006, by which petitioner sought to delete and expunge part of deposition of plaintiff from line no.4 till the end at Exhibit-46.

3. Mr. Muthiyan relying upon observations of this Court in case of *Mahabanoo Navroz Kotwal Vs. Piloo Fali Bomanji*¹ submits that party can lead evidence in relation to the matters already pleaded and even if a party wants to lead evidence in respect of subsequent events, unless such pleadings are amended, it is not possible even for the Court to consider the matter for the first time in evidence. According to him, affidavit in lieu of examination-in-

¹ (2015) 3 AIR Bom. R. 151.

chief would be of no avail or cannot be looked into, when it is not in consonance with pleadings.

4. There cannot be dispute as to proposition of law espoused in case of ***Mahabanoo Navroz Kotwal*** (supra). However, in such case, if evidence brought on record by plaintiff is found to be beyond pleadings or relevant, it can be ignored by Court at the time of final hearing of matter. No specific provision is brought to notice of Court that mandates/enables to expunge contents of evidence affidavit tendered by witness.

5. It appears from impugned order that further examination-in-chief of plaintiff is recorded on 28.09.2022, however, till this date no cross-examination was conducted by defendant leading to “no-cross” order. The order of no-cross is now set aside on 17.04.2023 and matter is posted for cross-examination. In this background, if any portion of examination-in-chief is irrelevant or beyond pleadings in plaint that can be ignored. However, in absence of specific provision to expunge the same the petitioner’s prayer cannot be countenanced. Therefore, there is no infirmity in impugned order passed by Trial Court. However, it would be open for petitioner to persuade the Court at appropriate stage to ignore portion of pleading, which is inconsistent or beyond pleadings incorporated in plaint.

6. In result, Writ Petition stands dismissed with aforesaid liberty to petitioner.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2025