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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

WRIT PETITION NO. 14425 OF 2023

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VASANT
ANANDRAO IDHOL
Date: 2025.03.29
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Om Shri Balavandhoot Trust

..Petitioner

V/s.

Sou Nalini Shantaram Pant Walwalkar

Dharmadaya Wishwast Nidhi & Ors.

..Respondents

Mr. Yuvraj Narvankar for the Petitioner.

Mr. N. M. Gawankar a/w. Mr. Shreyas Gawankar for the
Respondent Nos.1 & 2.

Mr. Ishaan Kapse for Respondent No.7.

CORAM : N.J. JAMADAR, J.

DATE : 25TH MARCH, 2025.

P.C.:-

1. Heard learned counsel for the parties. The challenge in this Petition is to an order dated 02.09.2023 passed by the Civil Judge (S.D.) Kolhapur, whereby the application preferred by the Petitioner / Plaintiff to recall PW 1 for subjecting him for further cross-examination, by setting aside no further evidence order qua the said witness passed on 17.12.2022, came to be

rejected.

2. On 06.12.2023, while issuing notice, this Court recorded the statement made on behalf of the Petitioner as under :-

“3. Learned advocate for the petitioner, on instructions, makes a statement that no other witness than Mr. Gurudatt Desai shall be examined in support of plaintiff's case. He also makes a statement that no further affidavit in lieu of examination-in-chief of this witness or any other witness shall be filed. The purpose of filing application is to submit this witness for the purpose of cross-examination by the defendant.”

3. Learned counsel for Respondent Nos.1 and 2 submits that Respondent Nos.1 and 2 are not averse to complete the cross-examination of PW 1.

4. The material on record indicates that PW 1 was substantially cross-examined. Covid-19 intervened. Thereafter, PW 1 did not turn up to submit himself to further cross-examination. Hence, learned Judge was persuaded to pass ‘no further evidence order’ qua PW 1. Thereafter, the Plaintiff examined PW 2, and Defendant No.1 also led evidence.

5. As the cross-examination of PW 1 remained in-

complete, his evidence cannot be read. In fact, PW 1 has been substantially cross-examined. It would, thus, be in the interest of justice that the cross-examination of PW 1 is completed so that his evidence can be read. Indeed, there is delay on the part of the Plaintiff to submit PW 1 for further cross-examination. However, the prejudice likely to be caused to the Defendant doesn't appear to be such as to reject the prayer to re-call PW 1 for submitting himself to cross-examination.

6. Hence the following order :-

ORDER:

- a). The Writ Petition stands allowed.
- b). The impugned order stands quashed and set-aside.
- c). PW 1 is re-called only for the purpose of subjecting him to further cross-examination by the Defendant.
- d). The statement made on behalf of the Petitioner/Plaintiff that the Plaintiff will not file further affidavit in lieu of examination in chief of PW 1, and would not adduce any further evidence, is accepted as a statement to the Court.
- e). The Plaintiff shall keep PW 1 present before the Court

for further cross-examination on 15.04.2025. Defendant Nos.1, 2 and 8 are at liberty to lead evidence in the rebuttal, after cross-examination of PW 1 is over.

f). The Trial Court shall make an endeavor to hear and decide the suit as expeditiously as possible.

(N.J. JAMADAR, J.)