



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 113 of 2025

[Dr. Anil s/o Ramkrishna Tankhiwale(since deceased) through his legal heirs
Shrikant s/o Anil Tankhiwale and ors. ..vs.. Mr. Rajendra s/o Premlal Pashine]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. Y. Deopujari, Advocate for the petitioners

CORAM : ANIL L. PANSARE J.

DATED : 17-02-2025

Heard.

2. The petitioners – plaintiffs are before the Court with a request to permit them to further examine petitioner no. 1-A for the purpose of proving the documents which were filed prior to commencement of his cross-examination.

3. Learned counsel for the petitioners submits that affidavit of chief-examination was filed on 27-2-2018. The documents were on record. The petitioners filed additional document on 11-7-2019. Thereafter for some reasons, further chief-examination to prove the documents was not taken. Learned counsel submits that the petitioners' counsel appearing before the trial Court lost sight of the fact that documents are to be proved by further chief- examination and on 29-2-2020, Petitioner No. 1-A was cross-examined. Thereafter the respondent's(defendant) evidence was concluded. The suit was then fixed for final hearing.

4. At this stage, the petitioners' counsel realized that the documents though filed were not shown to witness for proving contents thereof. He then moved application to conduct further chief-examination of Petitioner No. 1-A, which came to be rejected on the ground of delay and latches.

5. The submissions put forth by the petitioners' counsel are uncontroverted in as much as none appeared for the respondent though served. At the same time, one cannot really find fault in the approach of trial Court in rejecting the request.

6. However, if the mistake committed, be it by a party or his counsel, is not cured, the important facet of trial will be left out and will only give rise to further litigation. In the circumstances and to have a decision after consideration to all the documents on all issues, it will be in the interest of justice to permit the petitioners to examine Petitioner No. 1-A for a limited purpose i.e. to prove the contents of documents which were already placed on record in terms of Order XVIII Rule 17 of the Code of Civil Procedure, 1908 subject to costs of Rs. 5,000/- to be paid by the petitioners to the respondent. Costs shall be deposited with the trial Court within fifteen days from today.

7. With the aforesaid observations, the order impugned i.e. order dated 18-11-2024 passed by the trial Court below Exhibit 149 in Regular Civil Suit No. 35/2013 is quashed and set aside. The application, Exhibit 149 is allowed to the extent of permitting Petitioner No. 1-A to examine himself further to the extent of proving contents of documents placed on record. Needless to mention that the respondent shall be entitled to cross-examine the witness.

8. The petition is disposed of in above terms.

(Anil L. Pansare, J.)