

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

WRIT PETITION NO.2310 OF 2025

(Jyoti wd/o Dinesh Laddha and others Vs. Jyoti w/o Mahesh Agrawal and another)

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

Court's or Judge's orders.

Ms. Aastha Sharma, Advocate for Petitioners.
Mr. J. B. Gandhi, Advocate for Respondent No.1.

CORAM: PRAFULLA S. KHUBALKAR, J.

DATE: 29th JULY, 2025.

1. Heard Advocate Ms. Aastha Sharma, learned counsel for petitioners and Advocate Mr. J. B. Gandhi, learned counsel for respondent No.1.

2. By way of this petition, the petitioner has challenged order dated 21.01.2025 passed by the Court of 15th Joint Civil Judge, Senior Division, Amravati in Special Civil Suit No.254/2015 thereby rejecting the application filed by defendant No.2 seeking to expunge part of evidence affidavit of P.W.1 as not confirming with Order VI Rule 4 and Order XIX Rule 3 of the Code of Civil Procedure.

3. Advocate Ms. Aastha Sharma, learned counsel for petitioners vehemently submits that the evidence on affidavit filed by respondent No.2 in the civil suit is not confirming with the plaint and therefore, the portion of the evidence on affidavit was required to be expunged. She submits that this application at Exhibit-130 was filed

before the learned trial Court by relying upon the provisions of Order VI Rule 2, Order XVIII Rule 4 and Order XIX Rule 3 read with Section 151 of Code of Civil Procedure. She submits that the plaintiff is required to plead only material facts in the plaint and evidence on affidavit has to be in conformity with the plaint and therefore, the portion of the evidence on affidavit filed in the civil suit which is beyond the pleadings needed to be discarded. She submits that the impugned order although takes into consideration the legal position that evidence cannot be given beyond pleadings, however, after referring to the relevant paragraphs of the application the Court has erroneously concluded that the paragraphs of the evidence on affidavit are not beyond the pleadings and wrongly refused to expunge the said portion.

4. Opposing the petition Advocate Mr. Gandhi, learned counsel for respondent No.1 vehemently submitted that the application filed by the petitioner deserved dismissal since there is no provision in the Code of Civil Procedure seeking expungement of the part of evidence. He further submitted that the position of law is settled that in case any statement in evidence on affidavit is beyond pleadings, the Court is entitled to discard said portion while deciding the suit finally. By referring to the relevant paragraphs of the plaint and the evidence on affidavit, he submitted that none of paragraphs of the evidence on affidavit are beyond pleadings. He, therefore, supported the impugned order. In support of his submissions he relies on the judgment of *Harakchand Gulabchand Dhoka v.*

Kashinath Narsingh Marathe reported in ***2010(6) Bom.C.R. 379*** and submit that in case any statement in evidence on affidavit is found beyond pleadings the Court is entitled to discard the said portion while deciding the suit finally and therefore, the application was liable to be dismissed and the same is rightly dismissed.

5. It has to be noted that the petitioner – defendant No.2 had submitted the application for expunging part of evidence by relying upon the provisions of Order VI Rule 2, Order XVIII Rule 4 and Order XIX Rule 3 read with Section 151 of the Code of Civil Procedure. A perusal of these provisions clearly show that none of these provisions deal with the aspect of expunging a portion of the evidence on affidavit. Provisions of Order VI Rule 2 deal with pleadings to state material facts and not evidence, provisions of Order XVIII Rule 4 is with respect to recording of evidence and provisions of Order XIX Rule 3 deals with matters to which affidavit shall be confined, which provide that the affidavit shall be confined to such facts as the defendant is able to prove from his own knowledge. As such the application submitted by the petitioner for expunging the part of evidence is apparently unsupported by any specific provisions of Code of Civil Procedure.

6. As regards the controversy involved in the petition, it has to be noted that the position of law is well settled that evidence beyond pleadings cannot be considered by the learned trial Court and in case any statement is made in the evidence on affidavit beyond pleadings, the Court is

entitled to discard the said portion while deciding the suit finally. Although the learned trial Court has referred to this position of law in the impugned order, however, by referring to the paragraphs of the evidence on affidavit and the plaint, the Court has also recorded its inference that the evidence on affidavit is not beyond the pleadings and accordingly rejected the application.

7. In view of the controversy involved in the instant petition and by considering the position of law it is clarified that the issue as to whether any part of the evidence on affidavit is beyond pleadings can be considered by the learned trial Court while deciding the civil suit. The parties are entitled to point out the relevancy or admissibility of evidence at the stage of final hearing of the suit. The position of law in this regard is clarified by the judgment in the matter of *Harakchand Gulabchand Dhoka v. Kashinath Narsingh Marathe supra*, on which the counsel for respondent has rightly placed reliance. In view of this clarification, there is no need to interfere with the impugned order, the writ petition therefore, deserves to be dismissed. The writ petition is dismissed. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)