



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

WRIT PETITION NO.6931/2019

Smt. Kantabai w/o Narendra Kumbhare and anr. .vs. Sudhir Nathu Titarmare
and Others.

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

Court's or Judge's orders

Mr. V. D. Muley, Advocate for petitioners.

Mr. N. B. Kalwaghe, Advocate for respondent Nos. 1 to 3.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 15, 2025

The petitioners – original defendant Nos. 1 and 2 are aggrieved by order dated 25.04.2019 passed below Exh.-149, in Regular Civil Suit No.236/2012, thereby allowing the application for production of documents.

2. Counsel for the petitioner submits that petitioner No.1 – original defendant No.1, during her cross-examination intended to show documents and accordingly application was filed. The grievance of the petitioners is that in the application, the purpose of filing document was not disclosed and, therefore, witness cannot be taken up by surprise of the document shown to her in the cross-examination.

3. The issue involved is no more res integra. Counsel for the respondents has invited my attention to the judgment passed by the Supreme Court in the case of **Mohammed Abdul Wahid .Vs. Nilofer and anr., [(2024) 2 SCC 114]**, wherein the Court held that the production of document for both the parties to the suit and witnesses, as the case may be, at the stage of cross-examination is permissible. Thus, the document can be

produced by other party when the witness/party is in witness box. In fact, Order XIII Rule 1 of the Civil Procedure Code, 1908, can be said to be an answer to the issue involved, which reads thus:

“1. Original documents to be produced at or before the settlement of issues.—

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.”

4. As could be seen, sub Rule (1) provides that the parties shall produce on or before settlement of issues all the documentary evidence in original, copies of which have been filed along with the plaint or the written statement. Sub Rule (3), however, provides that nothing in Sub Rule (1) shall apply to documents produced in the cross-examination of the witnesses of the other party.

5. The Supreme Court, in the aforesaid judgment, has clarified that the word “witnesses”, used in Sub Rule (3) of Rule 1 would include parties to the suit. That being so, there appears

no error when the Trial Court allowed the respondents – plaintiffs to produce document when petitioner No.1-defendant No.1 was in witness box. No interference is, therefore, called for in the impugned order in supervisory jurisdiction under Article 227 of the Constitution of India. The writ petition is, accordingly, dismissed. No order as to costs.

(Anil L. Pansare, J.)

Kahale