



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

Writ Petition No. 767 of 2025

[Vinayak s/o Pandurang Mukund ..vs.. Digamber s/o Arjundas Ramchandani]

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

Court's or Judge's orders

Mr. D. I. Jain, Advocate for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 12-06-2025

Heard.

2. On 12-2-2025, following order was passed.

“Heard.

2] *The petitioner – plaintiff has filed a suit against the respondent – defendant seeking declaration that two blank stamp papers, each of Rs.50/, given to the respondent sometimes in diwali season of the year 2010, should be not misused by the respondent.*

3] *The learned Counsel for the petitioner submits that the respondent has produced before the trial Court two stamp papers of October – 2010 allegedly given by the petitioner to him but on going through the stamp vendor’s register, the petitioner is of the view that those stamp papers were not purchased by him.*

4] *In context with above, the petitioner filed application before the trial Court under Order XVIII Rule 3A of the Code of Civil Procedure, 1908, seeking permission to examine the stamp vendor first.*

5] *The learned Counsel for the petitioner submits that in a given case, purpose will be served by examining stamp vendor and the petitioner may not enter the witness box. The trial Court, however, held that the petitioner should examine himself first.*

6] *Issue notice to the respondent returnable on 5/3/2025. Notice on interim relief also.*

7] *In addition to usual mode, the petitioner may serve the respondent by all permissible modes, including speed post and file affidavit of service.”*

3. Thus, the question is whether it is mandatory for the party to examine himself in terms of Order XVIII Rule 3A of the Code of Civil Procedure, 1908 (for short ‘the Code’).

4. Order XVIII Rule 3A of the Code reads as under :-

[3-A. Party to appear before other witnesses. - Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.]

5. In the present case, the petitioner – plaintiff sought permission to examine himself at a later stage and sought permission to examine stamp vendor first which according to the petitioner, in a given case, will be sufficient evidence to decide the issue. Thus the petitioner is suggesting that he may not be required to examine himself, if the purpose is served by permitting him to examine the stamp vendor.

6. The question before the Court, as argued by learned counsel for the petitioner, is as regards two stamp papers, both dated October, 2010 allegedly given by the petitioner to the respondent. According to the petitioner, the stamp papers were not given by him and, therefore, sought permission to examine stamp vendor, who will, in turn, produce register showing entries as to who purchased the stamp papers and that will serve the purpose. That being so, there appears no reason why should trial Court insist the petitioner to examine himself first.

7. None appears for the respondent though sufficient opportunity was given. Thus, there is no counter to the submissions made by the petitioner.

8. The provisions under the Code being procedural, the Court below should adopt pragmatic approach. In any case, the provisions under Order XVIII Rule 3A enables party to request the trial Court to allow any other person to be examined witness prior to the party who wishes to appear as witness. The trial Court should be liberal while entertaining request made under said provisions.

9. The order impugned is, therefore, not sustainable. The petition is accordingly allowed. Order dated 16-10-2024 passed below Exhibit 86 in Regular Civil Suit No. 9/2020 by Civil Judge Senior Division, Malkapur is quashed and set aside. Application, Exhibit 86 filed by the petitioner – plaintiff is allowed as prayed for.

10. The petition is disposed of in above terms.

(Anil L. Pansare, J.)

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