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**(2018) 10 BOM CK 0127**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 11592 Of 2018**

Kallinath Shivyogi Dhange

APPELLANT

Vs

Rajendra Alias Aparao Mdhukarrao Vedpathak And Others

RESPONDENT

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**Date of Decision :** 19-10-2018

**Acts Referred:**

Code of Civil Procedure, 1908 — Order 7 Rule 2, Order 7 Rule 4, Order 9 Rule 20,  
Order 11 Rule 1, Order 18 Rule 4, Section 30, 151

**Citation :** (2018) 10 BOM CK 0127

**Hon'ble Judges :** Ravindra V. Ghuge, J

**Bench :** Single Bench

**Advocate :** Kallinath Shivyogi Dhange

**Final Decision :** Dismissed

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## Judgement

1 I have heard the Petitioner in person on 17.10.2018 at length. Considering that his submissions were concluded at rising time, this matter was posted today for passing orders.

2 The Petitioner in person stated that since his submissions have concluded, he be exempted from appearing today in the court.

3 The request put forth by the Petitioner is that the Trial Court should direct the advocates of the defendants to prepare a list of written questions in

crossÂexamination and they should tender the said questions to the Petitioner witness in the form of interrogatories under Order 11 Rule 1 of the

Code of Civil Procedure. Further request is that this Petitioner would prepare his answers to the said questions and he would tender those answers in

written form before the Trial Court as his crossÂexamination. Such request was put forth before the Trial Court below Exhibit 41 and the same has

been rejected by the impugned order dated 15.09.2018.

4 The Petitioner in person submits that he entered his affidavit in lieu of examination in chief under Order 18 Rule 4 of the Code of Civil Procedure on 18.08.2018 in RCS No.69/2017. After being administered the oath for verification and the affidavit in lieu of examination in chief was taken on record, the Petitioner was expected to face cross examination on 03.09.2018.

5 He moved the application Exhibit 41 on 06.09.2018 stating that the Trial Court should direct the advocates for the defendants to prepare their interrogatories, which infact are questions in cross examination and such written questions be delivered to the Petitioner so that he can prepare his written answers and by tendering his answers in the court, such answers would form the part of his cross examination. It is orally submitted before me that after the Petitioner submits his written answers, his cross examination should be closed and there should not be an actual cross examination in oral question and answer form before the Trial Court.

6 Reliance is placed on the following provisions, which read thus :  
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(a) Order 11 Rule 1 of the Code of Civil Procedure :  
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Order XI : Discovery of inspection.

1. Discovery by interrogatories : In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination

of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which

of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might

be admissible on the oral cross examination of a witness.

(b) Section 151 of the Code of Civil Procedure :  
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151. Saving of inherent powers of Court : Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make

such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

(c) Paragraphs 84, 85 and 86 of Chapter VI of the Civil Manual :  
:

84. Other means by which the Court may ascertain what is necessary in order to

frame issues are interrogatories and the discovery and inspection of documents (Order XI), admissions (Order XII) and the production of documents (Order XIII).

The Judges and lawyers should make themselves thoroughly acquainted with these provisions and endeavour to make use of them.

Attention is invited to the position of these Orders in the Scheme of the Code. They precede the Order relating to issues. This fact considered along

with the provisions of Rule 20, Order XI, shows that according to the Scheme of the Code, all matters must be got clarified before the issues are settled.

85. The Court should see that discovery is given and admissions are made before trial. The law permits the administration of interrogatories by a party

to his opponent to obtain admissions which will facilitate the proof of the case of the party who delivers the interrogatories. A party may be notice in

writing call upon the other party to admit, within 15 days from the date of service of the notice, for the purpose of the suit only, any document (Order

XII, Rule 2), and any specific facts mentioned in the notice (Order XII Rule 4). Order XII, Rule 2, contains the salutary provision that when a party

has refused or neglected to admit, the subsequent cost of proving the documents should be paid by the party so neglecting or refusing, whatever the

result of the suit may be, unless the Court otherwise directs and that no costs of proving the documents should be allowed unless such notice is given,

except where the omission to give the notice is in the opinion of the Court saving of expense.

Rule 3A of Order XII enables the Court even where no notice is given under Rule 2 of Order XII at any stage of the proceedings of its own motion

to call upon any party to admit any document and record whether the party admits or refuses or neglects to admit such document.

According to the provision of Rule 2A of Order XII, every such document, which a party is called upon to admit, if not denied specifically, or by

necessary implication or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to have

been admitted except as against a person under a disability. In its discretion, the Court may, however, for reasons to be recorded, require any

document so admitted to be proved otherwise than by such admission.

In the heavier and more complicated cases, it will usually be advisable, after the documents have been lodged in Court, to allow at least one date (or more if necessary) before issues are framed for admissions, discovery; interrogatories and the like; and to fix, if necessary, one or more dates after the issues have been framed for the completion of this preliminary work.

86. Section 30 of the Code provides that a Court may of its own motion make orders as to interrogatories, the admission of documents and facts, and the discovery, inspection and production of documents.

7 While canvassing his submissions, the Petitioner in person relied upon an illustrative format of the "manner of writing the Roznama" in the suit proceedings by the Civil Courts. An entry in the illustrative Roznama at "11th March" is pointed out to suggest that the Roznama indicates that the defendants' lawyer has appeared and has taken permission of the Trial Court to deliver interrogatories for the examination of the Plaintiff.

8 I find that reliance placed by the Petitioner in person on the illustrative Roznama is totally misplaced since that illustration only indicates, for the knowledge of the judges of the subordinate judiciary, as regards the manner of writing the Roznama. The said entry would also indicate that it was just an illustration so as to apprise the trial court judges as to how the Roznama is to be written.

9 The Petitioner in person has then pointed out paragraph 229(1) and (2) in support of his contentions. He has then placed reliance upon the judgments of this Court in the matters of Kishorilal Babulal vs. Ramlal Ganeshprasad Tiwari and others, 2014 (1) Mh.L.J. 782 and Shrivallabh Dongardasji Sikchi vs. Ibrahimkhan Ahmadkhan and another, 2015 (2) Mh.L.J. 175.

10 When called upon to explain as to why does the Petitioner desire that the defendants should not cross examine him as a plaintiff witness in the open court, the Petitioner in person, who is about 70 years old and is a retired employee, submitted that he finds himself under pressure when standing in the witness box in the court hall. He was represented by an advocate in the proceedings before the Trial Court and he has discharged his advocate since he has himself studied various provisions of law and desires to conduct the suit proceedings himself.

11 I find that the reason that the plaintiff finds himself under pressure in the court premises and hence, does not desire to face the cross-examination

before the court, cannot be a ground which can be said to be sustainable. Had he been handicapped or disabled on account of health reasons that he cannot appear in the court or move out of his house, the cross-examination could be conducted with the appointment of the court commissioner at his residence or at a suitable place. He, however, desires and he reiterates his desire that he should not be cross examined in the open court. I do not find that Order 11 Rule 1 of the Code of Civil Procedure would support such a request of the Petitioner.

12 In Kishorilal Babulal (supra), this Court permitted interrogatories to be posed under Order 11 Rule 1 so that it would curtail the recording of oral evidence and save the time of the court. It was not the case that the witness had entered into the witness box, had tendered an affidavit in lieu of examination-in-chief and then had sought to relieve himself of facing the cross-examination by standing in the witness box.

13 In Shrivallabh Sikchi (supra), this Court permitted interrogatories to be posed since the recording of evidence had not yet commenced and the Trial Court had rejected the application for posing interrogatories on the ground that there are other means of proving a particular fact and such means could be resorted to under the Evidence Act.

14 Considering the above, I do not find that the impugned order passed by the Trial Court dated 15.09.2018 could be termed as being perverse or erroneous. This Writ Petition, being devoid of merit is, therefore, dismissed.

15 After the conclusion of the oral submissions of the Petitioner in person, when I disclosed my view in the matter that this petition would not be entertained and I also disclosed to him that I will deliver an order today (yesterday 18.10.2018 being holiday), he put forth two requests. Firstly that, the District Legal Aid Authority may be directed to render the services of an advocate as the Petitioner draws a pension of Rs.20,000/Â per month and cannot afford the services of an advocate. Secondly, the Trial Court be directed to expedite the hearing in RCS No.69/2017.

16 As such, the Petitioner is permitted to tender an application to the learned Joint Civil Judge, Junior Division, Omarga in RCS No.69/2017 seeking assistance of an advocate from the Legal Aid Services Authority. The learned Judge would process the said application and in the interest of justice, would ensure that the Petitioner is granted legal assistance through the Legal Aid

Services Authority within four weeks.

17 Since the suit is lodged in 2017, it would be unfair to the litigants, whose cases are pending before the same Court for longer durations, by

expediting this suit. I am, therefore, not accepting the request of the Petitioner for expediting the hearing of the suit, out of turn.