
(1999) 07 BOM CK 0094

In the Bombay High Court

Case No : Civil Revision Application No. 82 of 1999

Mr. Jacinto R. Santana and Others

APPELLANT

Vs

Mr. Baboi B. Naik and Others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A

Citation : (1999) 101 BOMLR 333

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Judgement

R.K. Batta, J.—Heard. Rule. With the consent of the learned Advocates for the parties, Rule made returnable forthwith. With their consent, Rule is heard forthwith. Heard Advocates for the parties.

2. There is no dispute that Constituted Attorney cannot appear in the capacity of the party who constituted such attorney but can appear as a witness. In this case, upholding the objections raised by the respondents, the Trial Court directed that the testimony of Constituted Attorney P.W. 1 recorded partly, stands discarded and the party, namely, the plaintiffs were directed to step into the witness box. Order XVIII, Rule 3A of the C.P.C. provides that 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. Admittedly no such application under Order XVIII, Rule 3A of the C.P.C. was filed and the Constituted Attorney was put into the box for examination for the purpose of deposition as if it was deposition of a party. Learned Advocate Shri A. Bhobe, appearing on behalf of the petitioners, has Categorizedly stated before me, that the plaintiffs in this case do not wish to examine themselves and, as such, the order of the Trial Court discarding the testimony of Constituted Attorney P.W. 1 already recorded, be set aside. It is not possible to accede to this contention of the learned Advocate for the petitioners because the evidence in question of the

Constituted Attorney P.W. 1 shows that the Constituted Attorney was deposing as if he was the party himself. The Trial Court has directed the plaintiffs to appear in the witness box. This direction obviously cannot be sustained, but the Trial Court would be free to draw adverse inference, if any, on account of the non-examination of the plaintiffs in the suit. In view of the statement made by learned Advocate for the petitioners that the plaintiffs do not wish to examine themselves as witnesses in the suit, the Constituted Attorney is allowed to be examined afresh in the proceedings.

3. The revision stands disposed of in aforesaid terms with no order as to costs.