

(2014) 10 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 410 of 2014

Syhesta Olieveira

APPELLANT

Vs

Dilip Shetye

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2

Citation : (2015) 1 ABR 10

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Asha Desai, Advocate for the Appellant; Aldrin Monteiro, Advocate for the Respondent

Judgement

F.M. Reis, J.—Heard Ms. Asha Desai, learned Counsel appearing for the petitioner and Shri Aldrin Monteiro, learned Counsel appearing for respondents no.10 to 13.

2. Notice was issued to the respondents indicating that the petition may be disposed of finally at the stage of admission. Hence, Rule. Heard forthwith with the consent of the learned Counsel. Shri Aldrin Monteiro, learned Counsel waives service on behalf of respondents no.10 to 13.

3. The above petition, inter alia, challenges an order passed by the learned Civil Judge, Senior Division, Panaji dated 22/06/2011, whereby the original defendants no.4, 5(a) to 5(c), who are respondents no.10 to 13 in the above Writ Petition, were directed to conduct the cross-examination of PW1 before the other defendants.

4. Ms. Asha Desai, learned Counsel on behalf of petitioner has pointed out that the original defendants no.1 to 3, who are respondents no.7 to 9 herein, have admitted the case of the plaintiff, who is the respondent no.1 herein in their written statement and, as such, according to the learned Counsel, the said respondents have to conduct the cross-examination before the other defendants in the suit. Learned Counsel has thereafter taken me through the written

statement and pointed out that the averments of the plaint have been substantially admitted by the said original defendants no.1 to 3 and, as such, the question of directing the remaining respondents/defendants to conduct the cross-examination is totally unjustifiable and deserves to be quashed and set aside. Learned Counsel further points out that in terms of Order 18 Rule 2 of Civil Procedure Code, it is well settled that parties who are supporting the plaintiffs have to conduct the cross-examination first. The learned Counsel, as such, points out that the impugned order is in excess of jurisdiction and, as such, deserves to be quashed and set aside.

5. The respondents no.1 to 9 and 16, though served for final hearing failed to remain present.

6. Shri Aldrein Monteiro, learned Counsel appearing for the respondents no.10 to 13 has supported the submissions of the learned Counsel appearing for the petitioner.

7. I have considered the submissions of the learned Counsel and I have also gone through the records. It cannot be disputed that the parties who support the case of the plaintiffs have to proceed with the cross-examination before the other defendants who are disputing the claim put forward by the plaintiffs. In this connection, this Court in a judgment dated 26/07/2013 passed in Writ Petition No. 444/2013 relying upon another judgment of the learned Single Judge of this Court has observed at para 5 thus:

"5. I have considered the submissions of the learned counsel appearing for the petitioner and I have also gone through the records. On bare perusal of the application filed by the petitioner at para 1, it is clearly stated that the interest of the petitioner does not conflict with the interest of the respondent nos. 2, 3 and 4. As such, the learned Judge was justified to direct the cross examination of DW1 by the petitioner will precede the cross examination of the plaintiff. Otherwise a situation would arise where the petitioner would have an advantage over the respondent no.1/plaintiff if the petitioner is permitted to cross-examine thereafter. The view taken by me is supported by the judgment of the learned Single Judge of this Court reported in Bhujang Nathuji Daf and Another Vs. Ramkrishna Daulat Daf and Others, , wherein it is observed at para 11 thus :

"11. As the interest of defendants No. 2 & 3 was common to certain extent with defendant No. 1, the trial Court should have permitted them to cross examine defendant No. 1 first and should have called upon the petitioner - plaintiff to cross examine defendant No. 1 at the end. The same course of action will be required to be followed if defendants No. 2 & 3 tender their evidence in the matter. Defendant No. 1 will be required to cross examine them first and petitioner - plaintiff will be required to cross examine the purchasers/their witness at the end. In present matter, as the petitioner - plaintiff has already cross examined defendant No. 1, there is no option but to permit them to further cross examine defendant No. 1, if they find it necessary after defendants No. 2 &

3 complete their cross examination of defendant No. 1. With this liberty available to petitioner, I find that there is no merit in writ petition. Writ Petition is accordingly dismissed. However, there shall be no order as to costs."

8. With the assistance of the learned Counsel appearing for the petitioner, I have also gone through the written statement filed by the respondents no.7 to 9. On perusal thereof, I find that the said respondents who are defendants no.1 to 3 in the suit have substantially admitted the case in the plaint filed by the plaintiffs. In such circumstances, the said respondents no.7 to 9 who are defendants no.1 to 3 would have to cross-examine PW1 before the other defendants in the suit.

9. As such, the learned Judge was not justified to pass the impugned order directing the original defendants no.4, 5(a) to 5(c) who are respondents no.10 to 13 in the above Writ Petition to conduct the cross-examination of PW1 before other defendants.

10. In view of the above, I pass the following order:

ORDER

- (i) The impugned order dated 22/06/2011 is quashed and set aside.
- (ii) The defendants no.1 to 3/respondents no.7 to 9 herein shall conduct the cross-examination of PW1 before the other defendants in the suit.
- (iii) Rule made absolute in the above terms.
- (iv) Petition stands disposed of.

11. Expedite authenticated copy of the judgment.