

MHAU130000342013



ORDER BELOW EXH.98

1. Present application is made by defendant No. 1 to 7 under Order 26 Rule 10(2) of the Code of Civil Procedure, 1908 for calling the court commissioner of cross-examination and also prayed to keep the cross-examination of the plaintiff in abeyance. Read the application and reply of plaintiff Exh.100. Heard Ld. Advocates for the rival parties.
2. Ld. Advocate for defendant No. 1 to 7 submitted that, this court had appointed a court commissioner by an order below Exh.22 and the commissioner has filed his report. The defendants No. 1 to 7 had made an application for examination of the court commissioner earlier and it was rejected as it was made at the stage of decision of an application for temporary injunction Exh.5. Now, the plaintiff has filed her evidence affidavit. However, considering the technical aspect, it is necessary to first cross-examine the commissioner on his report and map.
3. Ld. Advocate for the plaintiff submitted that, the the defendant no. 1 to 7 have adopted delaying tactics. They failed to cross-examine the plaintiff and no cross-examination order is passed against them. Present application is made by them with a view to delay the trial. Therefore, it is necessary to reject the application.

4. It is a matter of record that, similar application has made by the defendant No. 1 to 7 at Exh. 22 and it was rejected by this court on the ground that it can not be allowed at the stage of hearing on an application for temporary injunction. It is also a matter of record that, this order was maintained by Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition. Now, the suit is at the stage of recording evidence of plaintiff. The plaintiff has filed evidence affidavit at Exh.60 and no cross-examination order was passed against all the defendants. Thereafter, the defendant No. 1 to 7 as well defendant No. 8 have made applications set aside no cross-examination order and this court had allowed said applications. However, the defendants No. 1 to 7 have made this application and prayed to keep cross-examination of plaintiff in abeyance and instead of it call the court commissioner as witness for cross-examination.

5. In such circumstances the provisions of order 26 Rule 10 (2) of C. P. C. comes into picture. The defendants No. 1 to 7 have a right to call the court commissioner for examination touching any of the matters mentioned in his reports or as to the matters in which he has made the investigation. The defendants No. 1 to 7 can call the commissioner for examination only with the permission of this court. Therefore, it is necessary to consider the propriety in permitting the defendants No. 1 to 7 to examine the court commissioner as witness.

6. In the present case the evidence of plaintiff is yet not concluded. The issues framed below Exh.53 show that the burden of proof is placed on the plaintiff to prove his case. Therefore, it is not desirable to permit

defendants No. 1 to 7 to examine the court commissioner and that too by keeping the cross-examination of plaintiff in abeyance. Hence, I pass the following order.

ORDER

Application stands rejected.

Date :- 01.08.2024
Place :- Aurangabad.

(Shri. N.H. Tikhe)
Civil Judge Senior Division
(Corporation Court), Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	: S.D.Chavan
Court	: C.J.S.D.(Corporation Court), Aurangabad
Date	: 01.08.2024
Order signed by the presiding officer on	: 01.08.2024
Order uploaded on	: 01.08.2024