

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

S.C. Suit No.5952 of 2007
(High Court Suit No.2986 of 2007)

Pradeep Kumar Pandurang
Suryawanshi & anr. ..Plaintiffs
V/s.
A. Harischandra Rao & Ors. ..Defendants

Coram : His Honour Judge
Shri S.P.DESHMUKH
Dated : 20th August,2014
(C.R. No.1)

Advocate Shri JS Kini for plaintiffs.
Advocate Shri JM Patil for defendant.

Order below Exh.5 in decided Suit No.2986 of 2007:

This application preferred by plaintiff-Pradeep Kumar through his Advocate Shri K. Andrews and requested that he be permitted to submit additional evidence affidavit and also the additional documents in support of the claim.

2 It is pertinent to note that this very plaintiff and advocate submitted first affidavit of examination-in-chief below Exh.3 on 17th October,2013 alongwith documents list (Exh.4). The stage of admission and denial of documents yet to be over. So, the cross-examination of plaintiff-Pradeep Kumar yet to be started by the advocate of defendants. In the mean time why the parties and their advocate could not proceed for further

stages is not reflected from the submissions of both the parties advocates. So I have no hesitation to observe that still the matter is before the court for evidence of the plaintiff.

3 As per provisions of Order 18 Rule 4 of CPC in every case the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who caused him for evidence. In sub-Rule 2 of Rule 4 of Order 18 the indications are given for the stage of cross-examination and re-examination. Here in the case in my hands, yet the parties particularly the plaintiff has not closed his evidence of chief examination, it means he must get an opportunity to add the facts with reference to documents if any, relevant to his claim and contentions by way of further chief-examination.

4 The advocate for defendants argued that the contents of additional affidavit and additional documents submitted with the list are not much relevant with the facts of the case and issues in controversy. I observed that relevancy of the facts and issues in controversy would be the later stage in the examination of court when the matter will be called for admission and denial of documents before calling upon the plaintiff to face the cross-examination to be held by the advocate of defendants. The additional affidavit of evidence is nothing but a set of additional facts which can be made part of earlier

evidence affidavit (Exh.3) and the additional documents can be said to be additional set of material which can be said to be part of earlier set of documents submitted with list Exh.4.

5 No doubt, admissibility of the documents will examine by the court whenever the plaintiff would offer to record those documents in the evidence. The aspect of relevancy of documents are the aspect of admissibility of documents in evidence would examine by the court when the plaintiff will be in the witness box to make the statements on admissibility of the documents. So filing of additional evidence affidavit for leading the admissibility of the documents on the facts stated in additional evidence, affidavit would not cause prejudice to the interest of defendants.

6 The advocate for plaintiff attracted my attention to the judgment from the case of ***Rajesh Varma V/s. Aminex Holdings and Investments and others reported in 2008(3) Mh.L.J. 460.*** In this ruling, His Lordship of Hon'ble Bombay High Court observed that the scope of Rule 4 of Order 18 does not preclude the party on record to adduce further examination-in-chief. But advocate for defendants claimed that this principle would not attract in the case in hands because according to him when these observations were recorded, the case was based on there was Rule 17A below Order 18 in CPC, but now said rule is deleted by the amendment of 2002. I observed that the ruling

being dated 10th January,2008 these aspects must have taken into consideration in the said ruling so the effects of deletion of Rule 17A being not considered by His Lordship in the year 2008, the objection of the advocate for defendants would not sustain.

7 The objections of the advocate of defendants are based on technicalities and most of the objections are about non follow-up of appropriate procedure at appropriate stages by the plaintiff.

8 In CPC, there are different stages for presentation of documents in the suit proceeding. First set of documents should place before the court alongwith plaint by the plaintiff if cause of action of the claim is based on any such document. Thereafter, there is a stage to produce documents after settlement of the issues on recording of pleadings of both parties. At that stage, the filing of documents by both parties is expected. But in case before entering into the witness box the party claiming filing of documents, it would not be against the natural justice because the other party would get an opportunity to point out relevancy or irrelevancy as well as admissibility and non-admissibility of the documents on the facts and issues in controversy. So, I observed that since the advocate for defendants did not raise objection when one set of documents was submitted with list Exh.4 at the stage of evidence, the objection for tendering the documents with additional list

alongwith additional evidence affidavit would be nothing but technical. So, I pass following order:

ORDER

The application (Exh.5) of the plaintiff for filing of additional evidence affidavit alongwith additional set of documents with list is allowed subject to opportunity of hearing to the defendants as to relevancy or irrelevancy of the documents and it's admissibility in the evidence when the plaintiff will be called in the witness box for further examination-in-chief on admission and denial of documents.

20/08/2014

(S.P.DESHMUKH)
Judge,
City Civil Court, Gr.Mumbai

Dictated on : 20/08/2014
Transcribed on : 20/08/2014
Signed by HHJ on : /08/2014