

Regualr Civil Suit No.6/2008 .

Shri .Shivaji Dyanu Ghatage,etc.

V/s.

Shri. Ananda Shankar Ugale,etc.

Order below exhibit 108.

Defendants filed this application under provisions of Order 18 Rule 3-A of Code of civil Procedure. (Hereinafter referred as CPC).

2. By way of this application defendants prayed to grant them permission to adduce evidence of other witnesses first before that of recording evidence of defendant No.1 as witness. It is sum and substance of defendant application that defendant No.1 is sick and infirm therefore, he is not available right now to stand in to witness box. The defendants along with list at Exh.112 produced medical certificate of defendant No.1. Thus defendant prayed to allow the application.

3. Plaintiff filed his say at Exh.110 and oppose the application. At the out set plaintiff denied all the submissions of defendants. It is the sum and substance of plaintiffs say that defendant No.1 is not ill and infirm he can step in to the witness box. In view of written statement, defence and issues it is desirable to take the witness of defendant No.1 at first. That the present application is filed with intention to delay the proceedings.

4. Peruse the application, say and record of the case. Heard advocate for both parties. Advocate for defendant relied on Judgment of **Hon'ble High Court of Bombay** in case of **Devkibai Patil V/s. Santosh Patil** reported in **2013 (3) BCR -45**, wherein it is held by Hon'ble High Court that Rule 3-A of Order 18 of CPC is directory and not mandatory.

In this case trial court refused defendants to adduce other witnesses before that of first defendant. The said order of trial court was quashed by the Hon'ble High Court and remanded the matter for reconsideration of application.

5. The defendants wants to adduce witnesses prior to first defendant as he is sick. From perusal of medical certificate along with list at Exh.112 it is seen that defendant no. 1 is not keeping well. The suit is of the year 2008. The sequence of witness examination will not substantially affect on any rights of parties as all the witnesses are cross-examine by the respective parties. Therefore, no prejudice will be caused to the plaintiff, if other witnesses of defendant examine before first defendant. In the case law cited supra Hon'ble High Court held that the provisions of Rule 3-A of Order 18 of CPC is directory and not mandatory. The facts of the case law cited supra and present application are same therefore, observation of Hon'ble High Court are applicable to present case. Considering these facts and circumstance the application is liable to be allowed. Hence, the following orders is passed:

ORDER

- a) Application is allowed.
- b) Defendants are permitted to adduce witnesses prior to that of first defendant as prayed.
- c) Costs in cause.

Atul A.Kore,

Date 18.10.2022.

Jt.Civil Judge Jr.Dn.,Panhala.

