

Order below Exh.1 in R.C.S.No.124/2013

The present suit is kept for arguments on the point of sequence of cross-examination of the defendant no.1. The plaintiff argued that defendant no.2 is supporting defendant no.1. Therefore, defendant no.2 shall conduct the cross-examination of defendant no.1 and thereafter the plaintiff would conduct the cross-examination. The Ld.advocate for plaintiff argued that if the defendant no.2 does not cross-examine defendant no.1 initially or prior to him and permission is granted to conduct cross-examination after plaintiff, the defendant no.2 may fill the lacuna remained in the evidence of defendant no.1. He produced article published on Internet to support his argument.

02] On the other hand, the Ld.advocate for defendant no.2 argued that it is the duty of plaintiff to conduct the cross-examination of defendant no.1. As per procedure first plaintiff shall conduct the cross-examination, then he will conduct the cross-examination of defendant no.1.

03] It is pertinent to note that, O-18 and other provisions of C.P.Code, does not prescribe the order of cross-examination. Section 138 of the Indian Evidence Act does not provide the sequence of examination of witness. After perusing the above section, it can be gathered that there must be first Examination in chief, than cross-examination, then re-examination. Section 138 of Indian Evidence Act also does not speak about cross-examination of defendant's witness by other defendants. But, law laid down by the Hon'ble Apex Court and High Court, permission is granted to conduct defendant's cross-examination by other defendants to protect their interest, who do not support the case of other defendant. The question arose, is pertaining to the situation, when one defendant

supporting other defendant, what would be the sequence of cross-examination of the defendant's witness. Defendant may conduct cross-examination of other defendants to protect his own interest. The law does not provide any right to conduct cross-examination of other defendant. However, one defendant is supporting to other defendant, then there is no need to protect the supporting defendant and the supporting defendant shall firstly cross-examination of other defendant's witness. If the plaintiff conducted cross-examination of defendant firstly, then there is a possibility that the supporting defendant may wash out the defence of plaintiff and fill the lacuna of other defendant. Therefore, the plaintiff is entitled to cross-examine the defendant after the cross-examination by supporting defendant. Hence, I pass the following order.

Order

- 01] The defendant no.2 is directed to conduct cross-examination of defendant no.1. If he failed to conduct the cross-examination, then he will not entitled to cross-examine the defendant no.1.
- 02] Thereafter, the plaintiff shall conduct cross-examination of defendant no.1.

Place :- Kalwan.

Date :- 06/05/2022

(D. M. Gitte)

Civil Judge Junior Division, Kalwan.