

Order Below Exh. 390 in Spl. C.S. No. 68/2012
(Suryakant Sutar Vs. Sharad Jadhav etc.)
(CNR No. MHSN020007952012)

Perused the application and say on it. Heard both learned advocates. I have gone through the proceeding.

2) Today matter is pending for cross-examination of the plaintiff by defendant No.1 which was started. However, during cross-examination it came to my notice that defendant No.1 and 9 have filed common written statement at Exh. 130 and initially both of them were represented by learned advocate Shri. A.N.Kulkarni and they have filed common vakalatnama at Exh.58 Matter was posted for final argument. However being aggrieved by one order of my Learned Predecessor in office passed at Exh. 340 and 341, the plaintiff had preferred the Writ Petition before the Hon'ble High Court. Said order in Writ Petition and application for permitting the plaintiff to lead secondary evidence was filed by taking file on board. So, notice was issued to defendants of said application. In pursuance of said notice, defendant No.1 appeared through learned advocate Shri. Irshad Palegar while defendant No.9 appeared through learned advocate Shri. V .S. Udgate. Though it is so, their written statement is still in common at Exh. 130. As the matter was more than 10 years old, the Hon'ble their Lordship while deciding the Writ Petition No. 33985/2023 had directed this Court to decide it on priority basis and the matter is now time bound.

3) On application filed by the plaintiff, evidence of the plaintiff was reopened. So, opportunity of cross-examination was

given to the defendants. Further record shows that common no cross order against defendant No.1 and 9 had been passed on 16/10/2019. However, as mentioned earlier, when the matter was again started after order of the Hon'ble High Court in Writ Petition No. 33985/2023 fresh notices were issued to defendants for appearance and they appeared through different advocates. It is also pertinent to note that though learned advocates are officers of the Court, even then neither learned advocate for defendant No.1 nor learned advocate for defendant No.9 pointed that defendant No.1 and 9 have submitted common written statement or common no-cross order was passed. As earlier cross-examination was not conducted before this Court, so this Court was also unaware of this fact. Therefore, as defendant No.1 and 9 were represented by different advocates, so assuming that they might have filed different written statement, separate no cross order had been passed against them. Moreover, both learned advocate for defendant No.1 and 9 filed separate application for setting aside no cross-examination order which was also allowed due to oversight.

4) However, as per the Order 1 Rule 11 and 12 of the Code of Civil Procedure, when there are more defendants than one, they are entitled to appear, act and plead by their own separate advocates. Even different advocates appear for different plaintiffs or different defendants whose defence is set out in one common written statement, the Court may under Rule 11 of the Code of Civil Procedure direct any of the advocates to be in-charge of the case for all the plaintiffs or defendants, as the case may be.

5) In this regard here, I would like to rely upon the decision of

the Hon'ble Bombay High Court in the case of **Venkatrao A. Pai and Sons Ltd., Vs. Narayanlal Bansilal And Ors.** In this decision the Hon'ble their Lordship had observed in Paragraph No. 4 and 5 which are relevant for case in hand. So I am repelling the relevant portion below :-

“Even under the Code of Civil Procedure, for the purpose of saving the time of the Court, power is given to the Court under Order 1, Rule 11 in cases where the plaintiffs are not represented by any counsel or advocate to give the conduct of the case to any one of the plaintiffs. In face of this power, in my opinion, the learned judge was not right in his observation that he had no power to prevent double cross-examination of the same witnesses at the hands of two different counsel or advocates of the two plaintiffs. The Court must always see that its time is not unnecessarily wasted and the proceedings are not unduly protracted. Examination or cross-examination of witnesses should always be done by one of the counsel appearing on behalf of the plaintiffs where more than one appear and there is no reason to doubt the competence of any one of these counsel in that behalf and it is not right to allow more than one of their counsel to do it. It is a very healthy practice which has stood the test of over a century in the Courts of this country that in cases where more than one person have joined as co-plaintiffs, there should be only one counsel who should be in exclusive charge of the case on behalf of all of them. It is undoubtedly open to the plaintiffs to engage as many counsel as they want. It all depends upon the length of their purse. But all the counsel or advocates engaged by them must appear jointly for all of them and only one of such counsel or advocates has got the right to be in charge of the case on behalf of all of them.”

“The Rule in fact provides that where there are more

plaintiffs than one or more defendants than one, the plaintiffs Or the defendants, as the case may be, may appoint one of them to act, appear and plead on their behalf. Sub-rule (2) provides that the authority so given should be in writing. On the construction of this Rule, it may appear as if each one of the plaintiffs or the defendants, as the ease may be, has got an independent right of acting, appearing or pleading for himself, but read in conjunction with Order 1, Rule 11 by which die Court has got the power to direct only one of the plaintiffs or one of the defendants as the Court might think fit to be in charge of the case irrespective of whether or not they appoint one of them to appear, act and plead on behalf of all of them, the implication of Rule 12 which Mr. Bhabha has tried to suggest cannot, in my opinion, lead to a conclusion that each one of the plaintiffs or each one of the defendants, as the case may be, is entitled also to appear, act and plead by his own advocate. Even where different advocates appear for different plaintiffs or different defendants whose defence is set out in one common written statement, the Court under Rule 11, in my judgment, has got the indisputable power to direct any of these advocates to be in charge of the case for all the plaintiffs or defendants, as the case may be.”

6) In case in hand, already learned advocate for defendant No.9 has conducted cross-examination in pursuance to written statement at Exh. 130. Therefore, the question of again cross-examining the plaintiff by learned advocate for defendant No.1 is unwarranted. However, learned advocate for defendant No.1 contended that learned advocate for defendant No.9 has conducted cross-examination, but the defences and status of defendant No.1 and 9 are totally different. Defendant No.1 is purchaser while defendant No.1 is just an agent. Defendant No.1 had filed counter-claim against the plaintiff for specific

performance of the agreement to sale of the suit property executed by the plaintiff in his favour. As defendant No.1 failed to deposit court fees for the relief claimed in counter-claim, his counter-claim is rejected. But the facts remain that the defence of defendant No.1 and 9 are different. Learned advocate for defendant No.9 has not conducted cross-examination in respect of defence of defendant No.1. When the written statement of defendant No.1 and 9 and cross-examination conducted by defendant No.9 is gone through, there appears substance in the contention of the learned advocate for defendant No.1.

7) May it be so, as observed by the Hon'ble their Lordship in supra cited decision, now it is to be decided by the learned counsel, that who will in-charge of the case on behalf of defendant No.1 and 9. Alredy defendant No.9 has conducted cross-examination. So it will be proper to direct both learned advocates to decide inter-se, first that who will proceed further with the case on behalf of defendant No.1 and 9. If they decide then they are at liberty to cross-examine the plaintiff in respect of stand of defendant No.1.

Date 30/07/2024
Sangli.

(Vibha P. Gaikwad)
2nd Jt.Civil Judge Sr. Division, Sangli.

