

MHST050002172005

Govind G. Patil V. Vyankatrao G. Patil.Civil M.A.No.03/2005.Order below Exh.104.

(1). The opponent no.01 has filed this application praying to direct the opponents no.2 to 5 to adduce the evidence by the side of opponents No.02 to 05 in first hand. It is stated by opponent no.01 vide this application that, present application is posted for evidence by the defence. The opponents no.02 to 05 by their say at Exh.53 (to the main application) have admitted the claim of the applicant, and thus they are colluding with the applicant. Considering the fact that, opponents no.02 to 05 have admitted the claim of the applicant, it is necessary to direct them to adduce their evidence (if any) in first hand (before opponent No.01). Opponent no.01 in support of his contention has relied upon the citation of the Hon'ble Bombay High Court cited in [2004(4) Mh.L.J. 620] Sunil Chhatrapal Kedar Vs. Y.S. Bagde and another.

(2). The applicant vide his say has resisted this application. It is stated by him that this application is false. The present applicant is age old person of 84 years. He remains present for each and every date. It is contended by the applicant that, opponents No.02 to 05 are not in collusion with the applicant. The opponent No.01 has filed this illegal application, which is unknown to the law, procedure and practice and the same is filed with only intent to prolong the hearing of this application. Thus applicant has prayed to reject this application with costs.

(3). Opponents No.02-A to 02-D, 03, 04-A to 04-D and 05 vide their say at Exh.106 have resisted this application. It is contended by them that, opponent No.01 has filed this illegal application, which is unknown to the law, procedure and practice. They are relying on the citation of Hon'ble Bombay High Court cited in '**2006(3) AIR Bombay, Mohd. Yasin V. Mohd. Nurani**' and **Order XVIII Rule 02 & 04 of C.P.C.** Thus, these opponents have prayed to reject this application. Ld. Adv. For the applicant and opponents No.02-A to 02-D, 03, 04-A to 04-D and 05 despite ample opportunity and sufficient time, failed to argue this application, hence same is considered without arguments of the applicant (original) and opponents No.02 to 05 (original).

(4). Heard the arguments of learned Advocate for opponent no.01. On considering the say filed (to the main application) by opponents no.02 to 05 at Exh.106 and the say filed by heirs of opponent no.04 at Exh.71 to the main application, it is more than evident that they have squarely admitted the claim of the applicant. On considering the ratio cited by the Hon'ble Bombay High Court in the citation relied upon by the opponent No.01 above, wherein the Hon'ble Bombay High Court has laid down directions about the 'Order of cross examination of plaintiffs and Conducting of trial'. The Hon'ble Bombay High Court has further held that, '**Defendants supporting the plaint in whole or in part should address the Court and lead his evidence first before the other defendants who do not support wholly or in part the plaintiff's case. Among the defendants, order of leading evidence should be (1) Those defendants who fully support the case of the plaintiff (2) Those defendants who partly support the case of the plaintiff (3) Those**

defendants who do not support the case of the plaintiff in any part'.

(5). On considering the ratio in '2006(3) AIR Bombay, Mohd. Yasin V. Mohd. Nurani' wherein Hon'ble Bombay High Court in paragraph No.6 has held that, 'The question, that falls for my consideration is, if there are more defendants whether some defendants have the right to make an application for order directing the other defendant to produce their evidence first if such defendants admit the facts in their written statement as contemplated by Rule 1. The question as to which of the defendants should begin though has not been specifically dealt with in Rule 1 or 2 of Order 18, in my opinion, the same analogy would apply to the defendants in-terse. Ordinarily, the defendant who opposes a claim of the plaintiff in whole will have such right against the defendant who supports the plaintiff in whole or in part. In a given case, the defendant who opposes the claim of plaintiff in whole, therefore, may be justified in seeking direction to the defendant, who supports the plaintiff in whole or in part, to begin and produce his evidence in support of the issues which the plaintiff is bound to prove. The court will have to deal with such questions on the basis of the pleadings in each case.' In my considered view both of the citations mentioned in paragraphs No.04 & 05 above, enlightens the same law and same does not helps either the opponents No.02 to 05, or the applicant.

(6). On considering the ratio laid down by the Hon'ble Bombay High Court in both the citations referred above and the grounds raised by the learned Advocate for the opponent no.01, I am of the considered view that, the application at Exh.104 is

required to be allowed. Hence, in the result, following order is passed.

ORDER.

- 1) Application is allowed.
- 2) Opponents No.02 to 05 are directed to adduce evidence in the first hand (before opponent no.01) if they wishes to do so, or to file the pursis that they do not wish to adduce evidence in their defence.
- 3) As the application (Original) is more than 20 years old, parties are directed to proceed with the hearing of the application without fail.

Karad .

(Kiran Khondre)

Date: 17/08/2026.

3rd Jt. Civil Judge Sr. Dn. Karad.