

MHST090000581995**Order below Exh. 128 in R.C.S. No.10/1996**

This application is filed by defendants and stated that plaintiff filed this suit against deceased defendant Uttamrao Nathojirao Mane. Defendant Uttamrao Mane in the suit died on 2005 then after in 2010 legal heirs of deceased defendant filed application in record to make them party in the suit and also file application to file their written statement on record but court rejected the application of legal heirs of deceased defendant Uttamrao Mane, then after legal heirs of this defendant filed writ petition No.10933/2017 before the Hon'ble High Court in which Hon'ble High Court passed the order as on 17 February 2025 and allowed to legal heirs of deceased defendant to adopt the written statement of deceased defendant as their written statement to the suit and legal heirs of deceased defendant be permitted to cross examine the plaintiff's witness(es) and adduce evidence in the rebuttal. Hence, legal heirs of deceased defendant filed this application as per order of Hon'ble High Court in writ petition NO.10933/2017 to recall plaintiff for cross-examination.

2. Plaintiff filed his say on Exh.129 and stated that application filed by defendants are false. Plaintiff further stated that defendant made this application with intention to deliberately mislead this court, stating that plaintiff was granted

and opportunity for cross-examination, meaning permission to cross-examine all witnesses, as per the order dated 17/02/2025 of Hon'ble High Court in writ petition No.10933/2017. In related the plaintiffs examination in chief and cross-examination are completed. The plaintiffs cross-examination has been conducted in detail. Therefore the deceased or his heirs never demanded the plaintiffs cross-examination. A previous application filed by the defendant to cross-examine witness Bajarang Jagganath Chavan which was rejected and on subsequent application to the Hon'ble Bombay High Court in writ petition No.6922/1999 was granted, allowing cross-examination of Bajarang Chavan.

3. Plaintiff further stated that despite this, the cross-examination did not occur and the suit was not decided within six months. Another application on Exh.37 was filed after 18 years later, seeking to cross-examination withness Chavan again, despite the stage of the suit being for the defendant evidence. The document also mention a new petition NO.10933/2017 filed in the Hon'ble Bombay High Court and in this writ petition the written statement of deceased defendant was permitted to accept their legal heirs and also permitted to cross-examining plaintiff witness(es) and adduce evidence in rebuttal means defendants is only cross-examine the witness Bajarang Chavan but not recall the plaintiff for cross-examination as per order of Hon'ble Bombay High Court in writ petition No.10933/2017.

4. Plaintiff further stated that as per order of Hon'ble Bombay High Court defendant only permitted to cross-examine

the plaintiff witnesses but not recall plaintiff for further cross-examination and prayed to reject the application filed on Exh. 128.

5. Heard both the parties.

6. Learned advocate of defendants argued that as per order in writ petition NO.10933/2017 Hon'ble Bombay High Court permitted defendants to cross-examine the plaintiff witnesses and also adduce evidence in the rebuttal means defendants is permitted by Hon'ble High Court to cross-examine plaintiff. So they file this application to recall the plaintiff for cross-examination and prayed to allowed this application and recall plaintiff for further cross examination.

7. Learned advocate for plaintiff argued that as per order of Hon'ble Bombay High Court in writ petition No.10933/2017 defendant only permitted to cross-examine plaintiffs witness Bajarang Chavan, but defendants not permitted to recall plaintiff for his further cross-examination because already detail cross-examination was completed in the suit and prayed to reject application filed by defendants.

8. On perusal of record and relevant Sections of Bhartiya Saksha Adhiniyam 2023 and Civil Procedure Code it is seen that a party to the suit is one on whose behalf or against whom a proceeding in a court has been filed. A witness is a person, either on behalf of the Plaintiff or the defendant, who appears before a Court to substantiate a statement or claim made by either side.

Neither the phrase ‘party to the suit’ nor ‘witness’ is defined under the CPC or any other statute on the books. However on this issue, It is seen that “...“To be a witness” means imparting knowledge in respect of relevant facts, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation. A person is said “to be a witness” to a certain state of facts which has to be determined by a court or authority authorized to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay, or giving his opinion, as an expert, in respect of matters in controversy...”

9. **As per Section 126 of Bharatiya Saksha Adhiniyam 2023 competency of husband and wife as witnesses in certain cases :-**

1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

2) In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.”

10. The word used is witnesses - which implies that a witness otherwise produced as also the defendant or the

plaintiff themselves, will stand on the same footing when entering evidence for the consideration of the court. The Code itself speaks to the effect that when a party to a suit is to testify in court.

11. As per Order XVI Rule 21 which reads as under:- **“21. Rules as to witnesses to apply to parties summoned.-** *Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.*

12. Further, Order XVI Rule 14, as extracted hereunder is taken note of. **“14. Court may of its own accord summon as witnesses strangers to suit. -** *Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary [to examine any person, including a party to the suit], and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.”*

13. In respect of the above provisions, it is essential to notice that prior to the amendment to the Code in the year 1976, this Section was applicable to “any person

other than a party to suit” the express exclusion has been amended, to turn it into an explicit inclusion within the term ‘witness’. We may also refer to Order XVIII Rule 3A which states that when a party to a suit wishes to appear as a witness, he is to do so prior to other witnesses. The section reads:- **3-A. Party to appear before other witnesses.** - *Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.*

14. It is clear from the above discussion, that witnesses and parties to a suit, for the purposes of adducing evidence, either documentary or oral are on the same footing. The discussion as aforesaid, emphasises the lack of differentiation between a party to suit acting as a witness and a witness simpliciter in the suit proceedings. The presence of these provisions also begs the question that if the legislature had the intent to differentiate between a party to a suit as a witness, and a witness. It may also be observed that nowhere in the Bhartiya Saksha Adhiniyam 2023 has the party been precluded from presenting himself as a witness, and therefore this differentiation based only on the meaning as it appears, cannot be countenanced.

15. A perusal of Sections 142, 143 and 144 of Bhartiya Saksha Adhiniyam 2023. Examination in chief,

cross-examination and re-examination are all facts of a trial which can be availed by a party or the adversary, for both the party to a suit as a witness and also for other witnesses called by the party. Therefore, this negates the interpretation that “the party who calls him” suggests a difference between the party as also the witness called by such party for the purposes of entering evidence before the court.

16. Means as per order in writ petition No.10933/2017 permitted defendants to cross-examine the plaintiffs witness(es) includes plaintiff also and hence it is just and proper and as per order by Hon’ble Bombay High Court in writ petition No.10933/2017 recall plaintiff for his further cross-examination. Hence, I pass following order :

ORDER

- 1) The application (Exh.128) is hereby allowed.
- 2) Plaintiff is directed to remain present for his further cross-examination on next fixed date.

Date:- 15/07/2025
Koregaon

(P. D.Yavatkar)
Jt. Civil Judge Junior Division,
Koregaon.