

**THE HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**  
**SINGLE BENCH :**

**{HON'BLE SHRI JUSTICE ANAND PATHAK}**

**Writ Petition. No.6650/2014**

**Batsiya and ors. Vs. Ramgovind and ors.**

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Shri P.C.Chandil, learned counsel for the petitioners/defendants.

Shri Abhishek Singh Bhadauriya and Shri Rohit Bansal, learned counsel for respondents/plaintiffs.

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**WHETHER APPROVED FOR REPORTING : Yes**

**Law Laid Down:**

1. Once examination-in-chief is affirmed by way of filing it before the trial Court, thereafter, it is not possible to withdraw the said affidavit. Deponent may file an affidavit subsequent to it and to add or supplement the facts for the reason that order XVIII Rule 4 of CPC does not limit itself to a single affidavit but nonetheless deponent ought not be allowed to keep on filing fresh affidavits to keep improving his case in routine manner.
2. If plaintiffs file another affidavit for examination-in-chief, then earlier affidavit shall not stand deleted but shall form part of record and evidence over which the other side shall have all the authority and opportunity to cross-examine the witness on the basis of examination-in-chief of party as reflected in different affidavits filed under Order XVIII Rule 4 of CPC.
3. The maxim "*Nullus in modum capere potest de injuria sua propria*". No man can take advantage of his own wrong is

one of the salient tenets of equity as has been held by the Apex Court in the case of **Eureka Forbes Limited Vs. Allahabad Bank and others, (2010) 6 SCC 193** and recently by this Court in the case of **Dharmendra Jatav Vs. State of M.P., 2021 2 MPLJ 327**.

**Significant Paragraphs:** 8, 9 and 10.

### **ORDER**

**(Passed on 28<sup>th</sup> day of July, 2021)**

The petitioners/defendants are aggrieved by the order dated 16.09.2014 passed by 5<sup>th</sup> Civil Judge, Class-II, Morena whereby the application preferred by the respondents/plaintiffs has been allowed and respondents/plaintiffs have been allowed to file fresh affidavit under Order XVIII Rule 4 C.P.C. and earlier affidavit filed by the plaintiffs stood deleted from record by the impugned order.

2. Precisely stated facts of the case are that a suit for declaration and permanent injunction was filed by the plaintiffs/respondents No.1 to 11 (herein referred as plaintiffs) against the petitioners as well as against respondents No.12 to 41. After framing issues, plaintiffs submitted examination-in-chief of plaintiff-Rajesh Kumar on affidavit under Order XVIII Rule 4 of CPC on 06.01.2003. It appears that plaintiffs wanted to add some more facts into their evidence, therefore, they submitted another affidavit of same witness Rajesh-Kumar treating it to be another examination-in-chief

on 28.07.2014. They did not stop here and again submitted another affidavit for chief-examination of same witness Rajesh Kumar on 01.09.2014 with an application under Section 151 of CPC with the prayer to cancel the earlier affidavits of chief-examination of Rajesh Kumar filed by the plaintiffs and in their place take the examination-in-chief dated 01.09.2014.

3. Petitioners as defendants contested the said contention and it was the specific stand of petitioners that no such withdrawal of earlier examination-in-chief can be done by the plaintiffs.

4. The trial Court passed the impugned order dated 16.09.2014 in which application under Section 151 of CPC preferred by the plaintiffs was allowed and they were directed to delete the earlier affidavits of examination-in-chief filed on 06.01.2003 as well as 28.07.2014 and directed to take subsequent affidavit of examination-in-chief dated 01.09.2014 on record.

5. According to counsel for the petitioners/defendants, decision under challenge is arbitrary and illegal. Affidavits of examination-in-chief cannot be deleted altogether from the record. At best, plaintiffs may add some facts subsequent to the affidavit filed earlier but cannot delete the earlier affidavit. Trial Court erred and order suffers from illegality.

6. Counsel for the respondents supported the impugned order

and submitted that due to mistake some important facts could not be referred in original affidavits therefore, same were supplemented later on. They prayed for dismissal of petition.

Heard.

7. Here, the case in hand is in respect of examination-in-chief (affidavit) of witnesses which was earlier filed in the year 2003 and after 11 years, plaintiffs again sought filing of subsequent affidavit under Order XVIII Rule 4 of CPC and sought deletion of earlier affidavit from record. So far as supplementing the additional grounds or factual contents are concerned, same may be permissible if the facts warrant so. Here, plaintiffs appear to be exceeded in their prayer when they tried to get the earlier affidavits deleted from the record which is not permissible. Court cannot order deletion of any portion of the examination-in-chief by way of affidavits earlier filed by the plaintiffs.

8. Once an Evidence Affidavit is filed, examination-in-chief of the deponent has, to all intents and purposes, begun because once Evidence Affidavit is filed, since there is no absolute requirement of it being required to be reaffirmed by the deponent while appearing in the witness box before that affidavit forms part of the evidentiary record, it follows that it is examination-in-chief as soon as it is affirmed. Once examination-in-chief is affirmed by way of filing it

before the trial Court, thereafter, it is not possible to withdraw the said affidavit. Deponent may file an affidavit subsequent to it and to add or supplement the facts for the reason that order XVIII Rule 4 of CPC does not limit itself to a single affidavit but nonetheless deponent ought not be allowed to keep on filing fresh affidavits to keep improving his case in routine manner.

9. In the present case, plaintiffs not only filed another affidavit for examination-in-chief but also very cleverly tried to get the earlier affidavit deleted from record which is not permissible. All the affidavits shall form the part of record and evidence over which the other side (defendant in the present case) shall have all authority and opportunity to cross-examine the witness on the basis of his examination-in-chief as reflected in different affidavits filed under Order XVIII Rule 4 CPC.

10. Trial Court erred in causing deletion of earlier affidavits. Plaintiffs cannot be allowed to thrive on their own wrong and cannot derive premium from their omission or manipulations. The maxim "*Nullus commodum capere potest de injuria sua propria*", No man can take advantage of his own wrong is one of the salient tenets of equity as has been held by the Apex Court in the case of **Eureka Forbes Limited Vs. Allahabad Bank and others, (2010) 6 SCC 193** and recently by this Court in the case of **Dharmendra**

**Jatav Vs. State of M.P., 2021 2 MPLJ 327.** On this count also, case of plaintiffs (Respondents herein) lacks merit.

11. Resultantly, petition preferred by the petitioners/defendants stands allowed and impugned order dated 16.09.2014 is hereby set aside.

12. From the record, it appears that matter is pending for almost 20 years and nothing but the Age of litigants progressed and cause title is flooded with litigants (initially 29 defendants and legal heirs, now 41 defendants in total). First affidavit of examination-in-chief was filed in year 2003 and another affidavit in year 2014. After last affidavit of examination-in-chief, it appears that matter is pending consideration for last 7 years because it was admitted in year 2014 before this Court.

13. Therefore, considering the overall facts situation and the prolonged litigation, trial Court is expected to expedite the trial, in which all litigating parties shall cooperate and no delaying tactics or procrastination of parties shall be entertained by the trial Court and shall try to conclude the trial proceeding as expeditiously as possible.

Petition stands **allowed and disposed of in above terms.**

**(Anand Pathak)  
Judge**