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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 22nd OF JUNE, 2023

MISC. PETITION No. 3505 of 2018

BETWEEN:-

**SMT. SHOBARANI W/O VEDPRAKASH AGRAWAL
KATLARI, AGED ABOUT 58 YEARS, OCCUPATION:
BUSINESS ANAND TRADERS BOMBAY BAZAR
CUTPEICE GALI KHANDWA R/O SHAKUN NAGAR
BRAHMANCHAL BHAWAN SIHADA ROAD KHANDWA
TAH. AND DISTT. KHANDWA M.P. (MADHYA PRADESH)**

....PETITIONER

(BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

**SMT. MALTI BAI W/O SARVAN KUMAR SIHORIYA,
AGED ABOUT 60 YEARS, R/O GANEH TALAI RANJEET
WARD NO. 2 KHANDWA TAH. AND DISTT. KHANDWA
M.P. (MADHYA PRADESH)**

....RESPONDENT

(BY SHRI ASHISH SHROTI - ADVOCATE)

MISC. PETITION No. 4173 of 2018

BETWEEN:-

**VEDPRAKASH S/O SHANKARPRASAD AGRAWAL, AGED
ABOUT 60 YEARS, OCCUPATION: KATLARI BUSINESS,
ANAND TRADERS, BOMBAY BAZAR CUTPIECE GALI
KHANDWAA R/O. 39, SHAKUN NAGAR BRAHMANCHAI
BHAWAN SIHADA ROAD KHANDWA TEH AND DISTT.
(MADHYA PRADESH)**

....PETITIONER

(BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

SMT. REKHA DEVI W/O BALDAVDAS SHAH, AGED

**ABOUT 70 YEARS, R/O. BOMBAY BAZAR CUTPIECE GALI
KHANDWAA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ASHISH SHROTI - ADVOCATE)
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This petition coming on for admission this day, the court passed the following:

ORDER

These Miscellaneous Petitions are filed by the defendant, being aggrieved of order dated 03.07.2018 and 13.03.2018, respectively, passed by learned II Civil Judge, Class-II, Khandwa (M.P.), in Civil Suit No.258-A/2016 & Civil Suit No.259-A/2016, whereby, application under Order 11 Rule 1 of Code of Civil Procedure (hereinafter referred to as 'CPC' for short), moved by the defendant was rejected by the trial Court observing that since case was already fixed for evidence of the plaintiff and her affidavit in lieu of oral evidence was already filed, thus, there was no justification in filing application under Order 11 Rule 1 CPC after ten months of filing of the affidavit of examination-in-chief, without cross-examining the plaintiff. Thus, recording a finding that since cross-examination of the plaintiff is pending, rejected the application under Order 11 Rule 1 CPC.

2. Reliance is placed by Shri Zargar on the judgment of a Coordinate Bench in ***Poonam Mansharamani (Smt.) Vs. Ajit Mansharamani [I.L.R. (2016) M.P. 2999]***, wherein it is held that issues can be framed on the basis of interrogatories and trial Court was required to examine whether the interrogatories have reasonable close connection with "matter in question". Thus, Coordinate Bench remanded the matter to the trial Court.

3. Shri Ashish Shroti, Advocate, for respondents supports the impugned order.

4. After hearing learned counsel for the parties and going through the record, there is a scheme of procedure which is to be followed starting from institution of suits. Section 30 CPC provides that subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, - (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and necessary of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of document or other material objects produceable as evidence.

5. When this is read with Order 11 Rule 1 CPC, which provides for discovery by interrogatories, then it is abundantly clear that the purpose of administering interrogatories to the opponent to obtain admission from him with the object of facilitating proof of his case as also to save the cost which may otherwise be incurred in adducing evidence to prove the necessary facts, then Order 10 Rule 1 CPC deals with admission or denial. After that stage Order 11 Rule 1 CPC provides for administration of interrogatories.

6. In *Raj Narain Vs. Smt. Indira Nehru Gandhi and another (AIR 1972 SC 1302)*, Supreme Court has held that the interrogatories which are in the nature of cross-examination, such as questions put only to test the credibility of the party interrogated, will not be allowed.

7. In the present case, perusal of Annx.P/4, application under Order 11 Rule 1 CPC reveals that all the proposed interrogatories are the once which could be put to the plaintiff in cross-examination and, therefore, keeping in mind the law laid down by Hon'ble Supreme Court in *Raj Narain* (supra), there is no illegality in the impugned order calling for interference. In fact, the judgment rendered by Coordinate Bench in *Poonam Mansharamani* (supra), is

distinguishable on its own facts, inasmuch, as prior to framing of the issues interrogatories were delivered to the trial Court and that was not the stage when the party was already available for cross-examination and these facts of that case being distinguishable, are not applicable to the present case.

8. Accordingly, petitions fail and are dismissed.

(VIVEK AGARWAL)
JUDGE

A.Praj.

