

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

BEFORE

JUSTICE SUJOY PAUL

ON THE 16th OF OCTOBER, 2023

MISC. PETITION No. 5629 of 2022

BETWEEN:-

**SUMIT S/O OMPRAKASH BALECHA, AGED ABOUT 36
YEARS, OCCUPATION: SELF EMPLOYED 1102
SAIPRASAD APARTMENT 8 LIENS PARLE POINT NEAR
ICICI BANK SURAT DISTRICT SURAT STATE GUJRAT
(GUJARAT)**

.....PETITIONER

(BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

**SMT. PRIYA BALECHA W/O SUMIT BALECHA D/O
DWARIKA PRASAD SONI, AGED ABOUT 32 YEARS, 3/22
DURSANCHAR COLONY BHANDARIYA ROAD
KHANDWA DISTRICT KHANDWA (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI ARJUN BAJPAI - ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

With the consent, finally heard.

2. In this petition filed under Section 227 of the Constitution, the parties are at loggerheads on two aspects. In an application filed by respondent/wife under Section 13 of the Hindu Marriage Act, 1955 during cross-examination of the wife, the petitioner/husband drew attention of the wife on Exh. D/5, a prescription/medical document, on which the wife responded that she has no relation with this document. The Court below put a note below para 31 of the

cross-examination and opined that the said document cannot be used for cross-examination. The petitioner before his examination-in-chief may file the said medical document in accordance with law and then can mark it as an exhibit.

3. The parties are at loggerheads on yet another note, which is appended under second question of para 54. The first question in this para was whether the wife left flat of Joy Vargees on her own volition ? The wife responded that the husband used to quarrel and beat her and threaten her to give divorce and therefore, she left the flat. The next question of the husband in the cross-examination was as to why husband used to assault her ? The Court appended the impugned note that this question can be asked only to the non-applicant/petitioner and therefore, disallowed the question.

4. Criticizing both the notes, Shri Avinash Zargar, learned counsel for the petitioner submits that as per Order 8 Rule 1A of the C.P.C. the petitioner could have very well used the relevant document for cross-examination of plaintiff or her witnesses. He also placed reliance on a Delhi High Court judgment in **Bhag Singh Gambhir and others vs. Rama Arora dated 08.07.2022.**

5. The second note whereby petitioner was deprived of cross-examination is called in question by contending that there is no prohibition under the Evidence Act or otherwise, to put the said question and the said question will not prejudice the wife in any manner. Thus, impugned order runs contrary to the aforesaid provision of the C.P.C. and also the Evidence Act. Thus, impugned notes be set aside and Court below be directed to permit the petitioner to ask relevant questions.

6. Shri Arjun Bajpai, learned counsel for the respondent/wife submits that the wife in para 31 of her cross-examination made it clear that she has nothing

to do with the medical documents and therefore, no fault can be found in the note appended to para 31.

7. Similarly, Shri Bajpai supported the other impugned note and urged that first question of question number 54 and second one are inter-related and in that context, both the questions and answers must be read and Court below has rightly read and put a note below the second question of para 54.

8. Parties confined their arguments to the extent indicated above.

9. I have heard the parties at length and perused the record.

10. Rule 1A was inserted in Order 8 w.e.f. 01.07.2002. It reads as under:-

"1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him. - (1)

Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement. न्यमेव जयते

(2)

(3)

(4) Nothing in this rule shall apply to documents -

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.

(Emphasis supplied)

11. The intention of law makers in inserting Rule 1A in general and sub-rule (4) in particular makes it clear that it was made permissible that the sub rules 1, 2 and 3 of Rule 1A shall not apply to such documents which are

produced for cross-examination of plaintiff's witnesses or handed over to a witness for the purpose of refreshing his memory. Thus, in the manner sub-rule (4) is worded, there is no manner of doubt that a document filed for the purpose of cross-examining a plaintiff's witness can be taken into account and used for his/her cross-examination. The Court below without considering this statutory provision, mechanically rejected/put the note below question No.31 and hence said note deserves to be set aside.

12. I find substance in the argument of Shri Zargar that Exh. D/5 can very well be used for the purpose of cross-examination of the wife. Thus, said note is set aside. However, it is made clear that this Court has not expressed any opinion about the validity, genuineness and impact of said document Exh. D/5. The Court below is best suited to examine the said aspect and give finding thereupon in accordance with law.

13. So far second note aforesaid is concerned, no statutory provision could be brought to the notice of this Court which prohibits the husband to ask that question whether or not that question is directly connected with the previous question or it is independent in nature. Thus, this note is also set aside. The Court below is directed to proceed from the relevant stage in accordance with law. At the cost of repetition, it is made clear that this Court has not expressed any opinion on the merits of the case.

14. Petition is **disposed of**.

(SUJOY PAUL)
JUDGE