

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 411 OF 2015

Mr. Ajit Sukhija,
son of late Colonel (Dr.) Chamanlal Sukhija,
major,
residing at House no. 165,
Campal, Panaji, Goa.

..... (original Plaintiff)/Petitioner

V e r s u s

1. Mr. Edgar Francisco Valles,
major,
married,
son of late Edgar Valles,
Portuguese National,
having his office at A. V. Da Republica,
Portugal.
2. Miss Filomena Fernandes,
major, residing at House no. E-346,
Morgado, St. Inez, Panaji, Goa.
Indian National.
3. Mrs. Guida Da Silva,
major,
residing of 7 Marina House,
New Marine Lines,
Mumbai,
Indian National.
4. Dr. Maria Lilia de Sequeira Sukhija,
major, married,
wife of plaintiff,
residing at House no. 165,
Campal, Panaji, Goa.
5. Mrs. Rajni Porob,
major,
r/o H. No. E-346,
Morgado, St. Inez, Panaji, Goa.
6. Mr. Chandrakant Pissurlenkar,
major,
resident of Dwarka Ram Nivas,
Khadpabandh, Ponda, Goa.

..... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. P. Hegde and Ms. A. Naik, Advocate for the Petitioner.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Respondents.

Coram :- F. M. REIS, J

Date : 9th July, 2015.

ORAL JUDGMENT

Heard Shri S. D. Lotlikar, learned Senior Counsel appearing for the Petitioners and Shri Sudin Usgaonkar, learned Senior Counsel appearing for the Respondents.

2. Rule. Heard forthwith. Learned Counsel appearing for the Respondents, waive service.

3. The above Petition takes exception to the Orders passed by the learned Civil Judge, Senior Division at Panaji, whereby five questions put to Dw.1 in his cross examination, came to be disallowed on the ground that such question is irrelevant.

4. Shri S. D. Lotlikar, learned Senior Advocate, has submitted that the learned Judge has erroneously refused such questions as, according to him, the questions are very material for deciding the matter in controversy. Learned Senior Advocate further submits that the learned Judge was not justified to interrupt the cross on irrelevant ground and, as such, cause grave prejudice to the Petitioners. Learned Senior Advocate further submits that the cross examination is a strong

weapon in the hands of the opposite party and, as such, it was not open to the learned Judge to call upon the Petitioners to justify the reason why the questions were being asked. Learned Senior Advocate further submits that the suit filed by the Petitioners is to declare a Will as null and void on the ground to coercion and unnatural nature of the Will and for other reasons stated in the plaint. Learned Senior Advocate further pointed out that it is well settled that in such cases, it is always open to the Plaintiff to draw some suspicion with regard to the execution of such Will and as such, it was not open to the learned Judge to disallow the questions put by the Petitioner. The learned Senior Advocate as such submits that the Orders passed by the learned Judge disallowing the questions be quashed and set aside.

5. On the other hand, Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Respondents, has submitted that the questions which have been disallowed are irrelevant to decide the matter in controversy. Learned Senior Advocate has thereafter taken me through the issues framed in the suit to point out that the questions which have been asked were not at all material nor have any nexus with the issues raised in the suit. Learned Senior Advocate further pointed out that the questions which were asked were not part of the pleadings of the Petitioners nor of the Respondents and, as such, the questions cannot be put to the witness. Learned Senior Advocate has thereafter taken me through the provisions of Section 145 and 146 of the Evidence Act to pointed out the questions which can be put to a witness in cross examination and, as such, according to him, the questions which have been put to the Respondents do not come within the said

provisions of the Evidence Act. Learned Senior Advocate as such submits that the question of interfering in the impugned Order would not arise at all and, consequently, the Petition be dismissed. In support of his submission, the learned Senior Advocate has relied upon the Judgment of this Court reported in **1979 Mh. L. J. 11** in the case of **Baburao Patel vs. Bal Thackeray & anr.** Learned Senior Advocate has pointed out that in the said Judgment, the law has been settled about the nature of the questions which could be put in the cross examination for examining the character of such witness.

6. I have given my thoughtful considerations to the learned Senior Advocates and with their assistance, I have also gone through the records. The cross examination of the witness is a weapon in the hands of the opposite party to establish the reliability or otherwise of a witness who is under cross examination. The witnesses are also cross examined to ascertain the credibility of such witness and also to see the veracity of the case put forward before the Court. Section 137 of the Evidence Act, inter alia, provides that the examination of a witness by the party who calls him shall be called his examination-in-chief, whereas the examination of a witness by the adverse party shall be called his cross examination. Section 138 provides that a witness shall first record the examination-in-chief and then if adverse party so desires, be cross examined, thereafter if the party calling him so desires be re-examined. The examination and cross examination must relate to relevant facts, but the cross examination need not be confined to the facts to which the witness testifies on his examination in chief. On plain reading of the said provisions, the contention of Shri Sudin Usgaonkar,

learned Senior Advocate appearing for the Respondents, that the cross examination has to be restricted only to the statements made in the examination-in-chief or in the pleadings cannot be accepted. It is always open in the cross examination to put questions in order that they can nullify or establish the veracity or otherwise of the allegations made in the proceedings.

7. When the relevancy and the admissibility of a particular question is seriously raised, it is the endeavour of the Court to elicit the answer after recording the objectives. The final decision on such objectives can be decided at the end of the trial. This view has been taken by this Court in the Judgment reported in **2015 SCC Bom 2571** in the case of **Neema Hingarh vs. Ashish Hingarh**, wherein it has been observed at Para 8 thus:

“8. In the case of *Irfan Badshah* (supra), the learned Single Judge of Delhi High Court considered Section 148 of the Indian Evidence Act, 1872 as also the decision of the Apex Court in the case of *Special Cell, New Delhi v. Navjot Sandhi alias Afshan Guru*, (2003) 6 SCC 641, wherein it was observed thus,

“... the endeavour of the Court wherever there is a serious dispute with regard to the relevancy and admissibility of a question should be to elicit the answer of the witness after noting the objections. The final decision to reject particular evidence as irrelevant or inadmissible can be if required taken at the end of the trial. This procedure benefits even the appellate court as in a case where the question is disallowed or excluded from evidence and the appellate court feels that the same was essential, it is at this stage not required to remand back the matter for re-examination of the witness. Cross-examination is the main tool of an

accused to test the veracity of the evidence of the witness and discredit his trustworthiness. Moreover, this does not mean that the trial court will not exercise its discretion in disallowing irrelevant questions.”

In such circumstances, I find that the procedure followed by the learned Trial court refusing to allow the questions at the time of the cross examination, is not at all justified, unless the Court comes to the conclusion that the questions are inter alia those which a party cannot be forced to answer and are patent erroneous and put to delay the proceedings and for oblique purpose or have no nexus with the dispute between the parties.

8. In the present case, on perusal of the questions which are disallowed, I find that such questions are to ascertain the correctness of the particulars in the disputed Will. Apart from that, some of the questions put by the learned Counsel appearing for the Petitioner in respect of amounts spent from the accounts may be otherwise not required but, however, such questions were in the context of an Order passed by this Court directing Dw.1 to maintain the accounts. Besides that, whether there were sufficient assets to satisfy the legacies at the relevant time may be material in the context to examine whether the testator was fully conversant with the position of her assets and whether she has taken into consideration these aspects while executing the Will under challenge on the ground that the testator was not in a firm position, to execute such Will.

9. These aspects have to be examined in the context of the

provisions of the Evidence Act which clearly stipulates the questions which are permissible in cross examination of the witnesses. As a general rule, the Court would not be justified in imposing restrictions in the cross examination of a witness. But however the Court may in the course of the trial come to the conclusion that some of the cross examination was unnecessary and, in such a case, the Court has powers to control the cross examination of a witness by the Counsel but such power has to be exercised in a reasonable way. As such, the Trial Court should see that the cross examination is not conducted in a rumbling way or that the questions are impermissible under the provisions of the Indian Evidence Act.

10. In view of the above, I find that the learned Trial Judge was not justified to disallow question nos. 1, 2, 3 and 4 in the course of the deposition of the witness by Order dated 04.06.2015. As far as the fifth question as to whether the legacies of cash amount to the beneficiaries in terms of the Will have been paid it has no nexus to the matter in controversy in the suit. Hence, the impugned Order disallowing question nos. 1 to 4 by Orders dated 04.06.2015 are quashed and set aside.

11. Rule is made absolute in the above terms.

F .M. REIS, J.

arp/*