

Anand Mehta and ors Vs. Rewal Mehta and ors

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Court : Jharkhand

Decided On : Mar-06-2013

Appellant : Anand Mehta and ors

Respondent : Rewal Mehta and ors

Judgement :

IN THE HIGH COURT OF JHARKHAND,RANCHI. W.P(C)No. 1072 of 2013
Anand Mehta & Ors Petitioners Versus Rewal Mehta
and Ors.Respondents For the Petitioners : Mr. M.S.Anwar
Sr. Advocate Mr.Afaque Ahmed For the Respondents :-x x x x CORAM :-
HONBLE MR. JUSTICE P.P.BHATT . . Order No. 2 Dated 6th March,2013 The
petitioners by way of filing this petition under Article 227 of the Constitution of India
have prayed for quashing the order dated 10.1.2013 passed in Title Suit No. 11 of
2011 by the learned Civil Judge(Junior Division) II, Munsif, Koderma whereby the
learned court below has held that there is no provision under the procedure law to
expunge the evidence of the witness in such a situation and accordingly, objection
rejoinder filed on behalf of the defendants/ petitioners has been rejected. Heard
the learned counsel appearing for the petitioners and perused the impugned order
and other materials placed on record. On perusal of the impugned order it
transpires that the learned court below, after careful consideration of the facts on
record, passed an order and thereby rejected the objection rejoinder filed by
defendants/petitioners. by observing as under :- It is not the case when the
witness has not turned up for cross-examination just after the examination in Chief
and withheld himself from its rigor, rather after some cross- examination he is not

coming and the reasons for not producing him has not been explained properly. When the plaintiff is not willing to cross-examine further any witness he cannot be forced to. The witness has signed on the date, he was partly cross-examined. There is examination in Chief and cross-examination in part, with an assertion of the plaintiff that he does not want to cross-examine further, the facts are sufficient to discharge the witness. There is no provision under the procedure law to expunge the evidence of a witness in such a situation and hence the objection, rejoinder filed on behalf of the defendant is rejected. The evidence of P.W. 2 is taken on record. There is examination in Chief of DW-3 on record, who is directed to come ready on 15.01.13 for cross-examination. This Court is of the view that the learned court below has properly observed in its order that there is examination in chief and cross-examination in part, with an assertion of the plaintiff that he does not want to cross-examine further and therefore, the facts are sufficient to discharge the witness. The learned court below has rightly observed in its order that there is no provision under the procedure law to expunge the evidence of a witness in such a situation. It appears that the learned court below has rightly and properly appreciated the facts on record and passed an order in accordance with law and thereby no error has been committed while exercising the jurisdiction and power vested with it while passing the order. Therefore, intervention by this court under Article 227 of the Constitution of India is not required. In view of the above discussion, this writ petition stands dismissed. It is clarified that the evidence recorded by the learned court below i.e. there is examination in chief and cross-examination in part which is on record, the evidentiary value of the said evidence can be considered at the time of appreciation of the evidence of the witness in accordance with law. (P.P. Bhatt, J) SD

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