

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 30<sup>th</sup> DAY OF JUNE 2017

BEFORE

**THE HON'BLE Mr. JUSTICE A. S. BOPANNA**

**WRIT PETITION Nos.113907-909 of 2015 [GM-CPC]**

**BETWEEN:**

THE PRESIDENT  
INTERNATIONAL SOCIETY FOR KRISHNA  
CONSCIOUSNESS (ISKCON), CTS.NO.211,  
SRI SRI RADHA GOKULANANDA TEMPLE,  
SHUKRAWAR PETH, TILAKWADI, BELAGAVI.  
REP BY ITS AUTHORIZED SIGNATORY  
SRI.RAMABHADRAPHARIYA DAS AKA  
RAJENDRA BASANGOUDA KAMATGOUDAR  
AGE: 39 YEARS  
R/O:ISKCON, BELAGAVI

... PETITIONER

(By Sri. MRUTYUNJAY TATA BANGI ADV.)

**AND:**

1. SMT.SARITA W/O ANAND KULKARNI  
AGE:MAJOR, OCC:LEGAL PRACTITIONER  
R/O:JEEVAN SUDHA, CCB-208,  
SHUKRAWAR PETH, TILAKWADI  
BELAGAVI
  
2. SRI.VISHNA @ PRAKASH S/O NARAYAN PHADNIS  
AGE:MAJOR, OCC:NIL

R/O:H.NO:25, BHAT GALLI  
KHANAPUR, DIST:BELAGAVI

3. SMT.MANGALA W/O NARAYAN PHADNIS  
AGE:MAJOR, OCC:Nil  
R/O:BHAT GALLI, KHANAPUR  
DIST:BELAGAVI  
REP BY ITS SRI.VISHNU NARAYAN PHADNIS  
R/O:H.NO:25, BHAT GALLI  
KHANAPUR, DIST:BELAGAVI
  4. SMT.MEENA @ SHOBHA  
W/O BASAVARAJ KATTIMANI  
AGE:MAJOR, OCC:HOUSEHOLD WORK  
R/O:TILAK CHOUK ROAD, KARWAR ROAD,  
NEAR SHANBHAG HOTEL, YALLAPUR  
DIST:KARWAR
  5. SMT.VARSHA @ NEELAM  
W/O RAMCHANDRA VARDE  
AGE:MAJOR, OCC:TEACHER  
UDAYACHAL HIGH SCHOOL, GODREJ AND  
BOUCE LIMITED, PROJ SHAHA NAGAR,  
VIKROLI, MUMBAI-79,  
ALSO AT GIRIKUNJAN NO.104,  
1ST FLOOR, NEW NAGARDAS ROAD,  
NEAR PINKI TALKIES,  
INFRONT OF TABLEA  
ANDERI (EAST) MUMBAI-400069
- SRI.RAMMOHAN S/O SHANKAR PHADNIS  
SINCE DECEASED BY LRS
6. SMT.NIRMALA  
W/O RAM MOHAN PHADNIS  
AGE:75 YEARS, OCC:HOUSE WIFE  
R/O:A 1101, SHAILESH CO-OPERATIVE

HOUSING SOCIETY,  
SECTOR NO.19, A NERUL (EAST),  
MUMBAI-400706

7. SMT.ARCHANA W/O MANGESH DABHOLKAR  
AGE:48 YEARS, OCC:SERVICE  
R/O:SHREE GANESH APARTMENT  
CO-OPERATIVE HOUSING SOCIETY LIMITED,  
A/44 L.J.ROAD, OPP SITLA DEVI TEMPLE,  
MAHIM, MUMBAI-400016
8. SRI.KISHOR S/O RAM MOHAN PHADNIS  
AGE:45 YEARS, OCC:BUSINESS  
R/O:A/7, AMBEDKAR NAGAR, G D AMBEDKAR  
ROAD, OPP HAFFKIN INSTITUTE PAREL,  
MUMBAI-400012
9. SRI.DNYANESH S/O RAM MOHAN PHADNIS  
AGE:42 YEARS, OCC:SERVICE  
R/O:A 1101, SHAILESH  
CO-OPERATIVE HOUSING SOCIETY SECTOR  
NO.19, A NERUL (EAST) MUMBAI-400706
10. SOU SULABHA G GADEKAR  
AGE:MAJOR, OCC:HOUSEHOLD WORK  
R/O:NEAR PAREL RAILWAY STATION  
PAREL, MUMBAI
11. SRI.PRAKASH S/O BASAVARAJ KATTIMANI  
AGE:MAJOR, OCC:BUSINESS  
C/O:VARSHA PHOTO STUDIO NEAR BUS STAND,  
YALLAPUR, DIST:KARWAR, AND ALSO AT TALUK  
CHOUK ROAD, KARWAR ROAD, NEAR SHANBHAG  
HOTEL, YELLAPUR, DIST:KARWAR
12. SRI.DEEPAK S/O BASAVARAJ KATTIMANI  
AGE:MAJOR, OCC:BUSINESS

C/O:VARSHA PHOTO STUDIO NEAR BUS STAND,  
YALLAPUR, DIST:KARWAR, AND ALSO AT TALUK  
CHOUK ROAD, KARWAR ROAD, NEAR SHANBHAG  
HOTEL, YELLAPUR, DIST:KARWAR

13. SMT.KAVITA D/O BASAVARAJ KATTIMANI  
AGE:MAJOR, OCC:HOUSEHOLD WORK  
R/O:TALUK CHOUK ROAD, KARWAR ROAD, NEAR  
SHANBHAG HOTEL, YELLAPUR, DIST:KARWAR
  14. MISS GOURI D/O RAMACHANDRA VARDE  
AGE:20 YEARS, OCC:STUDENT  
R/O:GIRIKUNJAN, NO.104, 1ST FLOOR, NEW  
NAGARDAS ROA, NEAR PINKI TALKIES, INFRONT  
OF TABELA ANDHERI (EAST) MUMBAI-400069
  15. SRI.SRINIVAS S/O MANOHAR DHABOLKAR  
AGE:MAJOR, OCC:BUSINESS  
R/O:PARVATI VILLA, 5TH ROAD, HINDU COLONY,  
DADAR (EAST), MUMBAI-400014
  16. SRI.KIRAN S/O MANOHAR DHABOLKAR  
AGE:MAJOR, OCC:MEDICAL PRACTITIONER  
R/O:PARVATI VILLA, 5TH ROAD, HINDU COLONY,  
DADAR (EAST), MUMBAI-400014
  17. SRI.JAYANT S/O MANOHAR DHABOLKAR  
AGE:MAJOR, OCC:BUSINESS  
R/O:PARVATI VILLA, 5TH ROAD, HINDU COLONY,  
DADAR (EAST), MUMBAI-400014
- ... RESPONDENTS

THESE WRIT PETITIONS ARE FILED UNDER  
ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA  
PRAYING THIS HON'BLE COURT TO QUASH THE  
ORDER PASSED BY THE SENIOR CIVIL JUDGE  
KHANAPUR DATED:28.04.2015 ON IA.NO.25 FILED

UNDER ORDER 18 RULE 17 OF CPC, IN OS Nos.289/2008, 212/08 AND 292/08, COPY AS PER ANNEXURE-J AND ALLOW I.A. NO.25, BY ALLOWING THE APPLICATION.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

**O R D E R**

The petitioner is before this Court assailing the order dated 28<sup>th</sup> April 2015 passed on IA No.25 in the clubbed suits bearing OS Nos.289 of 2008, 212 of 2008 and 292 of 2008, as at Annexure 'J' to the petition.

2. The petitioner is the defendant No.11 in OS No.212 of 2008, which is clubbed along with OS Nos.289 of 2008 and 292 of 2008 wherein he is the plaintiff and defendant No.10 respectively. At the stage, when DW-2 was examined, the petitioner herein could not immediately cross-examine the said witness. The Court below had accordingly discharged DW-2. The petitioner herein, seeking an opportunity to cross-examine DW-2, had filed an application in IA No.25 in

OS No.212 of 2008 under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking that DW-2 be recalled and be permitted to be cross-examined by the petitioner. The Court below on considering the application, through the order dated 28<sup>th</sup> April 2015 dismissed the said application. It is in that light, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and perused the petition papers, including the order impugned herein.

4. A perusal of the same would indicate that the Court below, apart from taking note of the dates on which DW-2 was cross-examined and the petitioner not being present on the said dates, had also briefly referred to the allegation that the petitioner herein as defendant No.11 has been colluding with the plaintiff Smt.Sarita. It is in that view, the Court below was of the opinion

that an opportunity to cross-examine DW-2 cannot be granted.

5. In the background of the same, what is necessary to be noticed is that except for taking note of the allegation, the Court below has not arrived at a definite conclusion with regard to the petitioner, in fact, colluding with Smt.Sarita due to which if the cross-examination is permitted, it would defeat the rights of the parties. In that background, what cannot also be lost sight of is that apart from the suit in OS No.212 of 2008, two other suits, as noticed above, have been clubbed and are being considered together. In one of the suits, namely OS No.289 of 2008, the petitioner herein is the plaintiff. Therefore, in that circumstance, when the different contentions have been advanced by the parties in the said three suits and when common evidence is being recorded by clubbing the suits, denial of opportunity to the petitioner to cross-examine any

one of the witnesses only on the bare allegation would not be justified.

6. That apart, even though the dates on which DW-2 was examined has been recorded, when an opportunity is sought, certainly, the same could be provided by compensating the other side. In fact, this Court, at the first instance, while directing the notice, has directed deposit of Rs.5,000/- towards the cost which, in any event, would compensate the hardship, if any, caused to the other side.

7. Therefore, keeping in view all these aspects of the matter, the order impugned dated 28<sup>th</sup> April 2015 is set aside. Consequently, IA No.25 filed in OS No.212 of 2008 is allowed. The Court below is directed to recall DW-2 and permit the petitioner to cross-examine the said witnesses

Needless to mention, keeping in view the observations made, the Court below certainly would have the power to limit the cross-examination, if any collusion between the parties is noticed in the nature of the question that is put in the cross-examination.

The amount deposited before this Court shall be transmitted to the trial court, which shall be paid to DW-2 on the date of hearing on receipt of the said amount.

These petitions are accordingly ***disposed of.***

**Sd/-  
JUDGE**

RK/-