

I have gone through the aforesaid three authorities and I find myself to be in agreement with the reasoning given by the Bombay High Court as well as the Gujarat High Court in Shah Hiralal Himatlal v. M.G. Pathak, AIR 1964 Gujarat 26 , so far as the order in which the cross examination of the plaintiff's witnesses is to be conducted. The reason for such an order is not far to seek. The Hiralal's case has rightly classified the defendants into three categories – firstly those who are supporting the case of the plaintiff fully, secondly those who are partially supporting the case of the plaintiff and thirdly those who are not at all supporting the case of the plaintiff. The classification of the defendants in the aforesaid three categories must regulate the cross examination of the plaintiff's witness. It may be pertinent here to mention that Section 137 of the Evidence Act also lays down that when a witness enters into a witness box, he will be first subjected to examination-in-chief, then cross examination and thereafter re-examination.

The Evidence Act clearly lays down that the scope of cross examination is much wider as it permits a party to cross-examine the witness even regarding his character in order to impeach his credibility. Leading questions which are suggestive of answer can also be asked to the witness. Therefore, in such a contingency where the scope of cross examination is much wider and gives better leeway to the defendant, it cannot be permitted by a party who either fully or partially supports the case of the plaintiff to cross examine witness after the contesting party has done. If this is permitted to be done, then it will greatly prejudice the rights of the parties who are contesting the claim of the plaintiff. I therefore find myself in agreement with the judgment of Hiralal's case that the party which supports the case of the plaintiff partially or fully must cross examine the witness of the plaintiff first. Accordingly, so far as the facts of the present case are concerned, the defendants No.3 and 4 are supporting the case of the plaintiff both partially and fully respectively and therefore they must first cross examine the witness of the plaintiff first rather than the defendant No.1 who is contesting the claim of the plaintiff. I accordingly allow the contention of the defendant No.1 directing defendant No.3 and other defendants to cross examine the plaintiff's witness in the first instance before the defendant No.1 undertakes the cross examination. However, expression of any opinion hereinbefore shall not be deemed to be an expression on the merits of the case."

*Mrs. Sarabjit Singh v. Mr. Gurinder Singh Sandhu , ILR (2011)1 Delhi 624*