

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11833 OF 2026

Navichandra B. Kothari (Since Deceased)
Through Legal Heirs

...Petitioners

Versus

Kundanmal Manmal Ratanchand (Since
Deceased) Through Legal Heirs And Ors

...Respondents

Mr. Bernardo Reis, i/b Siddharth Shenoy, for the Petitioners.
Mr. S. M. Khaire, for Respondent Nos.1(b)(c) and 2(b).

CORAM: N. J. JAMADAR, J.

DATED: 10th SEPTEMBER, 2026

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SUBHASH
KULKARNI

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Oral Order:-

1. Heard the learned Counsel for the parties.
2. The proceedings in SC Suit No.1338/1982 have reached a stalemate as the learned Advocate who was appointed to record the cross-examination of the plaintiffs witness, who is more than 80 years of age, has purportedly declined to execute the commission on the consolidated fees of Rs.10,000/- only, ordered to be paid by the learned Judge, City Civil Court, on 7th October, 2025.
3. The plaintiffs moved an application for enhancing the Commissioner's fee, and sharing the fees of the Court Commissioner by the parties. By an order dated 10th December,

2025, the learned Judge rejected the application opining that the Court has no objection if the plaintiff is willing to pay the Commissioner's fee at the rate of Rs.10,000/- per session. However, the defendants cannot be directed to share the Commissioner's fee equally as the Commissioner was appointed at the instance of the plaintiff.

4. Mr. Reis, the learned Counsel for the petitioners, on instructions, submits that, the Commissioner who has been appointed by an order dated 7th October, 2025 is not willing to execute the commission, and another Commissioner may be appointed. The learned Counsel for the respondents submits that, the respondents – defendants are not averse to the appointment of the another Commissioner to record the cross-examination of the plaintiffs witness.

5. With the consent of the Counsel for the parties, Advocate Mr. Pankaj Suresh Kowli, is appointed as a Commissioner to record the cross-examination of the plaintiffs witness on the terms and conditions stipulated by the learned Judge, City Civil Court, in the order dated 7th October, 2025, except the Commissioner's fee.

6. The Commissioner is requested to execute the commission and complete the exercise of recording the cross-examination of

the plaintiffs witness within a period of six weeks from 16th September, 2026.

7. The parties shall co-operate with the learned Commissioner in the expeditious conclusion of the recording of the cross-examination of the plaintiffs witness.

8. The plaintiffs shall pay the Commissioner's fee to Mr. Pankaj Suresh Kowli, the newly appointed Commissioner for recording cross-examination of the plaintiffs witness and the fee shall form the part of costs in the suit, that shall abide the final order that may be passed by the trial Court.

9. The petition stands disposed.

[N. J. JAMADAR, J.]