

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.21218 OF 2015

Shri. Mahesh Vilas Deshpande

.. Petitioner

Versus

Sou. Vidula Vijay Kulkarni and another

.. Respondents

Mr. R. C. Barge, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 25th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against two orders i.e. the order dated 24.04.2015 and the order dated 03.07.2015 passed by the Learned Civil Judge, Junior Division, Satara. By the first order, the Trial Court has set aside the appointment of the Court Commissioner by allowing the application filed by the Defendants. By the second order, the application filed by the Petitioner/original Plaintiff for reinstatement of the order of the Court Commissioner to record his evidence came to be rejected. It is pursuant to the application filed by the Petitioner that the Court Commissioner came to be appointed to record the cross-examination of the Petitioner/original Plaintiff. In the said application filed by the Petitioner/original Plaintiff, it was stated that the Plaintiff is patient of Polio and Paralysis in support of which a medical

certificate was relied upon. The Trial Court appointed Advocate Mr. L. V. Aghar as the Court Commissioner to record his evidence. The said evidence was to be recorded at the Plaintiff's residence. It appears that in terms of the said order dated 08.12.2014 passed by the Trial Court the Court Commissioner had addressed notice dated 20.01.2015 to the Learned Advocates appearing for the respective parties in the said suit that the evidence would be recorded on 01.02.2015. It seems that all the arrangements were made for recording the cross-examination of the Plaintiff on 01.02.2015. However, the Plaintiff did not make himself available on the said day and the justification was sought to be given that the Plaintiff had to visit Pune for a condolence visit in view of the death of a relative in Pune. Hence, the arrangements made for recording the evidence of the Plaintiff on 01.02.2015 were turned fruitless. It seems that when the Court Commissioner and other parties reached the residence of the Plaintiff on 01.02.2015, the Plaintiff's mother informed the parties that the Plaintiff is habituated to moving around. It is in the background of the said fact that the Defendant filed an application for cancellation of the appointment of the Court Commissioner which the Trial Court has allowed by the first impugned order dated 24.04.2015. The Plaintiff thereafter filed application Exh.54 for reinstatement of the order of the appointment of the Court Commissioner by invoking Section 151 of the CPC. The Trial

Court did not find any reason to interfere with the order cancelling the appointment of the Court Commissioner, having regard to the report of the Court Commissioner and the report of the clerk of the Court, the Plaintiff was accordingly directed to remain present in the Court when the suit was to be listed for recording of evidence. It is required to be noted that the Plaintiff resides in Satara, where the Trial Court is situated and therefore does not have to travel much. In my view, having regard to the background facts as above, the impugned orders passed by the Trial Court cannot be taken exception to, no case for interference in the Writ Jurisdiction of this Court is therefore, made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]