

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.658 OF 2015

Shri. Vijay Ramchandra Bagalkote. ...Petitioner.

VS.

Shri. Vijaykumar Raghunath Kulkarni. ...Respondent.

Mrs.Anjali N.Helekar for the Petitioner.

Mr. A.P. Kulkarni for the Respondent.

CORAM : K.R. SHRIRAM, J.

DATE : 02/2/2015

PC:

The petitioner is challenging the order dated 8/8/2014 whereby the application of the petitioner to appoint the Court Commissioner to record his cross examination was rejected. Counsel for the petitioner states that the petitioner has been polio affected since childhood and since then his condition has been deteriorating and at the age of 67 it is very difficult to climb floors to go to the Court and stand for long time.

2) Counsel for the respondent states that the petitioner is physically fit though he is polio affected. The respondent has also annexed photographs of the petitioner travelling by scooter and attending to shop which is the suit premises.

3) The petitioner has relied upon Disability Certificate issued by Government Medical College, Kolhapur stating that the witness has

Locomotor disability to the extent of permanent physical impairment/disability of 50%. The petitioner has also relied on a note as to what is locomotor disability. It appears from that “this difficulty to be physical active or fulfill any activity leads to locomotor disability”. The Trial Court has considered all the documents and has come to a conclusion that there is no necessity to appoint the Court Commissioner as prayed for in the application. The Court has also observed that Certificate does not show that the petitioner has such sickness which will prevent the petitioner to walk. Counsel for the respondent states that Kolhapur Court building is a ground plus first floor structure and the petitioner will be able to go the Court. Counsel for the petitioner states that the petitioner will pay the costs of the Commissioner. In my view, if the petitioner can pay the costs of the Commissioner, the petitioner can certainly arrange for help to go to the Court premises. In the circumstances, I see no reason to interfere in the order of the Trial Court under Article 227 of the Constitution of India. Petition is rejected.

- 4) In view of the facts and circumstances of the case, no order as to costs.

(K.R. SHRIRAM, J.)