

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION STAMP NO.7074 OF 2015**

Mrs. Yesubai Bandhu Patil.] ... Petitioner

Versus

Shri Rajaram Sitaram Patil and Ors.] ... Respondents

Mr. K. S. Dewal i/b Mr. J. M. Joshi for Petitioner.
Mr. Puranik for Respondent No.1.

CORAM :- M. S. SONAK, J.

DATE :- MARCH 25, 2015

P. C. :-

1. Rule. At the request of and with the consent of learned Counsel for parties, rule is made returnable forthwith.

2. This petition challenges Order dated 09/03/2015 made by the Joint Civil Judge, Junior Division, Kalyan, to the extent it dismisses the Petitioner's application at Ex.235 seeking permission to examine Plaintiff No.2 Yesubai Patil in the proceedings.

3. The application at Ex.235 came to be rejected mainly on the ground that the Petitioner did not obtain leave of the Court to examine herself at a stage later than the examination of her witnesses. The provisions of Order 18 Rule 3-A of the CPC provides that where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf have been examined, unless the Court,

for reasons to be recorded, permits him to appear as his own witness at a later stage.

4. In the present case, in pursuance of earlier order made by this Court, the Petitioner has examined a Power of Attorney on behalf of herself and further an additional witness i.e. a handwriting expert, has also been examined. By application under Ex.235, the Petitioner applied for leave to examine Yesubai Patil, who is the Plaintiff No.2, on the ground that there are some matters which were to the personal knowledge of said Plaintiff No.2 and therefore, it is necessary that she deposes in the matter, rather than rely only upon the evidence tendered by the Power of Attorney.

5. There are directions of this Court for expeditious disposal of the suit. In the past, several orders have been made by this Court, in the matter of regulation of the evidence proceeding in this suit. In such circumstances, the Petitioner ought to have indicated much earlier that she desired to examine the Plaintiff No.2 to appear as a witness in the matter. It is in this sense that the learned Civil Judge has observed that no leave as contemplated by Order 18 Rule 3-A was applied for by the Petitioner.

6. Although, the Petitioner has been negligent in the matter, that by itself may not be a sufficient ground to deprive her the opportunity of permitting the Plaintiff No.2 to appear as a witness in the matter at this stage. The application at Ex.235 , in fact, seeks

leave of the Court to examine Plaintiff No.2 as a witness at a later stage. This Court, in the case of *Vijaysingh Gordhandas & others Versus Dwarkadas Mulji*¹ has held that on the plain reading of Rule 3-A of Order 18, permitting examination of the Plaintiff after such Plaintiff has examined other witnesses is not entirely prohibited. The discretion is vested in the Court if sufficient grounds exist. That was also a case where the Plaintiff desired to examine himself personally after deposing as Power of Attorney on behalf of the trust. Since sufficient reasons had been given as to why the Plaintiff could not be examined earlier, this Court held that such reasons had to be duly taken into consideration.

7. As noted earlier, although Petitioner has been negligent in the matter, there is no reason to deny the Petitioner opportunity to examine Plaintiff No.2 as a witness. The prejudice that is bound to occasion to the Respondents, can always be compensated in terms of costs. The learned Counsel for Respondent No.1 submitted that this matter has traveled to this Court on at least 3 occasions in the past. Directions have been issued from time to time for expeditious disposal of the matter. Considering all these circumstances, the learned Counsel for Petitioner, upon taking instructions from the Petitioner, submitted that the Petitioner is willing to offer costs of Rs.50,000/- to the Respondents. The learned Counsel for Petitioner, upon instructions, has stated that consequent to the examination of Plaintiff No.2 as the witness, the Plaintiff's evidence shall be concluded.

¹ 2002 (2) Bom. C.R. 764

8. Upon cumulative consideration of all the aforesaid circumstances, the impugned order dated 09/03/2015, to the extent is rejects application at Ex.235, is set aside. The Petitioner is directed to examine Plaintiff No.2 i.e. Yesubai Patil as a witness in this proceeding. This shall be subject to the Petitioner paying costs of Rs.50,000/- (Rupees Fifty Thousand Only) to the Respondent No.1 within a period of one week from today.

9. The costs may be paid to the Respondent No.1 directly or deposited in the trial Court, wherefrom the Respondent No.1 shall be entitled to withdraw the same.

10. The learned Civil Judge shall comply the earlier direction in the matter of expeditious disposal of the suit.

11. All parties shall co-operate in the matter of expeditious disposal of the suit.

12. All parties to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)