

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

WRIT PETITION NO.6867 OF 2015

Mrs. Prabha P Shenai : Petitioner
versus
Mr. M Ramchandra Raju : Respondent.

Dr. Prakash R Shenai, the POA holder of the Petitioner in person is present.
None for the Respondent though served.

CORAM : R. M. SAVANT, J.
DATE : 06th October 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 01/07/2015 passed by the learned Judge of the City Civil Court, Greater Bombay. By the said order Notice of Motion 372 of 2015 filed by the Respondent herein i.e. the original Defendant in the suit came to be allowed and the Defendant was permitted to cross examine the Plaintiff.

2 The suit in question being Suit No.7733 of 1996 is filed under Order XXXVII of the Code of Civil Procedure and was originally filed in this Court and bore High Court Summary Suit No.2110 of 1996. It seems that the said suit was decided ex-parte as the Defendant did not appear in the suit. On the application being moved by the Defendant, the said ex-parte decree came to be set aside and the suit came to be restored to file. The said suit thereafter proceeded to hearing and was appearing on the board from time to time before

the learned Judge of the City Civil Court, Greater Bombay who was hearing the said suit, and ultimately the suit was kept for ex-parte judgment on 30/07/2014 by the order dated 11/07/2014. Prior thereto on 27/06/2014 the learned advocate Ms Poona Mittal appearing for the Defendant informed the Trial Court that she is withdrawing her appearance which was accordingly allowed to be withdrawn on 11/07/2014 by the Trial Court. Thereafter the Defendant i.e. the Respondent herein was represented by another advocate Shri D S Mishra who filed an application for setting aside the order of “No cross” passed against the Defendant. The said application by way of Notice of Motion was tendered in the City Civil Court on 17/09/2014 and leave was granted by the learned Judge of the City Civil Court, Greater Bombay. Thereafter the said Notice of Motion appeared from time to time and ultimately the said Notice of Motion came to be allowed by the impugned order 01/07/2015, the operative part of which is annexed to the above Petition at page 17 and detailed reasoned order is part of the compilation which is tendered by the Constituted Attorney of the Petitioner i.e. the original Plaintiff. The reason mentioned by the Defendant in the said application has commended acceptance to the Trial Court. The Trial Court to give a fair chance to the Defendant deemed it appropriate to permit the Defendant to cross examine the Plaintiff.

3 The Constituted Attorney of the Plaintiff who is appearing in

person would seek to draw this Court's attention to the conduct of the Defendant. It was therefore the submission of the Constituted Attorney of the Plaintiff that the Trial Court ought not to have passed the order permitting cross examination.

4 In my view, though the Trial Court has referred to the earlier conduct of the Defendant, but has however allowed the Notice of Motion on the ground that a fair opportunity has to be given to the Defendant. Since the Trial Court deemed it appropriate to exercise discretion in favour of the Defendant, in the interest of justice, this Court does not deem it appropriate to interfere with the said discretion. However, since the suit of the year 1996, the Trial Court is directed to complete recording of evidence within six weeks of the date on which the suit would be listed before it, which date according to the Constituted Attorney of the Petitioner/Plaintiff, is 16/11/2015 and would not grant adjournments to the parties on any ground. With the aforesaid observations, the above Writ Petition is disposed of.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Order.