

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10049 OF 2015

Maruti Kashinath Raut ... Petitioner
Vs.
Vijay Bhagwant Deshpande ... Respondent

Mr. Surel S. Shah for Petitioner.
Mr. N. V. Bandiwadekar i/b. Mr. Mandar G. Bagkar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 20, 2015

P.C. :

Heard Mr. Shah, learned Counsel for petitioner and
Mr. Bandiwadekar, learned Counsel for respondent.

2. By this Petition under Article 227 of the Constitution of India, original defendant has challenged the judgment and order dated 20.03.2015 passed by the learned Civil Judge Junior Division, Indapur below exhibit-80 in Regular Civil Suit No.130 of 2006. By that order, the learned trial Judge rejected the application made by Dattu Maruti Raut, son of the original defendant and his power of attorney to file his affidavit of examination-in-chief as also seeking permission to conduct the Suit on behalf of his father by cancelling the affidavit of examination-in-chief filed by the defendant.

3. In due deference to the suggestion given by the Court, the learned Counsel appearing for the parties agree for disposing of the Petition in the following terms:

- a. Dattu Maruti Raut shall not file affidavit of examination-in-chief. In other words, he will proceed on the basis of affidavit of examination-in-chief filed by the defendant;

- b. Dattu Maruti Raut will take out appropriate application seeking permission of the trial Court to depose in place of defendant and also conduct the Suit on his behalf. Respondent is at liberty to oppose that application. All contentions in that regard are expressly kept open.
 - c. The said application shall be decided by the learned trial Judge uninfluenced by any observations made in the impugned order.
- 4. Petition is disposed of in the aforesaid terms with no order as to costs. Parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab