

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

WRIT PETITION NO.9349 OF 2015

Tirathraj Murlidhar Mishra : Petitioner
versus
Smt. Geetika Gajanan Sawant and anr. : Respondents.

Mr. S S Kharat i/by Mr. Pradeep Havnur for the Petitioner.
Mr. Raju Gupta for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 30th September 2015

P.C.

1 At the outset the learned counsel for the Petitioner seeks leave to amend so as to correct prayer clause (c) so as to incorporate the challenge to the order dated 23/07/2015 passed by the learned Judge of the City Civil Court, Bombay. The said incorporation is sought in view of the fact that though in paragraph 11 it is mentioned that the said order is also under challenge, inadvertently the same does not even mention in the prayer clause (c) of the Petition. Leave granted. Amendment to be carried out forthwith.

2 The above Petition takes exception to the four orders i.e. order dated 30/10/2014, order dated 26/2/2015, order 23/07/2015 and order 24/08/2015. In so far as the order dated 30/10/2014 is concerned, the said order has been passed rejecting the application filed by the Petitioner for production of two documents which was sought vide the said application

(Exhibit 6). In my view having regard to the reasons mentioned in the impugned order dated 30/10/2014 prima facie there is no merit in the said challenge. However, it would be open for the Petitioner to raise a challenge to the order in the Appeal that would be required to be filed if the decree ultimately goes against the Petitioner.

3 In so far as the orders dated 26/10/2015, 23/07/2015 and 24/08/2015 are concerned, the same revolve around exhibition of the documents. In so far as the order dated 26/10/2015 is concerned, the Trial Court has deemed it appropriate to exhibit the documents which find a mention in the operative part of the said order. In my view, therefore, the Petitioner cannot have any grievance in respect of the said order notwithstanding the fact that certain documents were not exhibited for which the Petitioner was granted permission to file additional affidavit of evidence. It is the order dated 23/07/2015 in respect of which the Petitioner can be said to have a grievance. By the said order the Trial Court has restricted the Petitioner's additional affidavit of evidence to the documents which the Petitioner is the author or signatory. The question that is therefore posed is, whether such restriction can be imposed by the Trial Court for a party wanting to lead evidence. It is after the additional affidavit of evidence is filed that the Trial Court would have to consider whether the documents in question have been proved by the Petitioner in accordance with law. However, at the stage of

filing of the additional affidavit of evidence the Petitioner cannot be directed to file the evidence restricted to certain aspects. Be that as it may, since the Petitioner seeks withdrawal of the above Petition with liberty to file an application for seeking review of the said order in the matter of restricting the Petitioner's additional affidavit of evidence to the documents of which he is the author or signatory. The above Petition is accordingly allowed to be withdrawn with liberty as prayed for. In so far as the order dated 24/08/2015 is concerned, the same is only consequential to the order dated 23/07/2015. The fate of the said order therefore hinges upon the decision that would be rendered by the Trial Court on the application for review which would be filed by the Petitioner. Hence at this stage, the merits of the said order need not be considered as the same would be contingent upon the decision of the Trial Court on the review application. Hence with the liberty to the Petitioner to file a review application in respect of the order dated 23/07/2015, the above Writ Petition is allowed to be withdrawn and is disposed of as such.

[R.M.SAVANT, J]

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