

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

WRIT PETITION NO.11132 OF 2014

Ibrahim Abbas Tamboli : Petitioner
versus
Bashir Chaganbhai Tamboli and anr. : Respondents.

Mr. Mohan B Jadhav for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 25th February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the common order dated 8/11/2014 passed by the learned Civil Judge, Junior Division, Atpadi, Dist. Sangli by which order the application filed by the Defendant No.1 (Exhibit 203) for striking out the evidence affidavits of Plaintiffs' witness filed at Exhibit 82 and Exhibit 191 on the ground that the said witness Nasrin Tamboli though already having filed the Affidavit at Exhibit 82 has again filed Affidavit at Exhibit 191 came to be rejected. By the said order the Trial Court has also rejected the Application of the Plaintiffs for cancellation of evidence affidavit of witness Nasrin Tamboli at Exhibit 82.

2 The Plaintiffs have filed a reply to the Application filed by the Defendant No.1, which reply was marked as Exhibit 205. The Plaintiffs prayed

that since the said Affidavit Exhibit 82 has not been read and recorded in evidence, the same may be cancelled, the Plaintiffs took a stand that application filed by the Defendant is not tenable.

3 The Defendant No.1 has also filed reply to the Application filed by the Plaintiffs, which reply was marked as Exhibit 207. The Defendant resisted the said application on the ground that the said application is not supported by any legal provision.

4 The Trial Court considered the said Application (Exhibit 203) and has rejected the same by the impugned order.

5 The rejection is on the ground that the course of action which the Defendant No.1 wants the Trial Court to follow is not permissible as the evidence cannot be struck off. However, the Trial Court has observed that earlier Affidavit of Evidence Exhibit 82 will not be taken into consideration and is filed. The Trial Court has recorded that the contents of both the Affidavits (Exhibit 82 and Exhibit 191) are the same, and since the evidence of the Plaintiffs' witness is complete in so far as Affidavit Exhibit 191 is concerned, the said Affidavit will be taken into consideration.

6 Having regard to the reasons recorded by the Trial Court whilst

rejecting the said application, In my view, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]