

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 68 OF 2015

Smt. Vaneeta D. Kamerkar .. Petitioner
vs.
M/s. Oriental Art Museum .. Respondent

Mr. Abdul Shaikh for Petitioner.
None for Respondent.

CORAM : M. S. SONAK, J.
DATE : 19 AUGUST 2015

P.C. :-

- 1] **Not on board. Upon production, taken on board.**
- 2] Heard Mr. Abdul Shaikh for the petitioner.
- 3] By the impugned order, the Revisional Court has permitted the partner of the respondent firm to depose, after the duly constituted attorney of the firm has already deposed in the matter.
- 4] Mr. Abdul Shaikh, the learned counsel for the petitioner has threefold objections to the impugned order:

(a) That since the constituted attorney has already deposed, there is no question of further permitting the partner to depose in the matter;

(b) Under the provisions of Order XVIII Rule 3A of the CPC if a party himself wishes to appear as a witness, he is required to appear before any other witness on his behalf is examined, unless the Court for reasons to be recorded,

permits him to appear as his own witness at a later stage. In this case, Mr. Shaikh contends that no reasons came to be recorded. The Revisional Court has not even considered this matter from this perspective. Accordingly, there is failure to exercise jurisdiction;

(c) The entire attempt is to fill in *lacuna* that have arisen in the deposition of the constituted attorney. Such attempt was rightly resisted by the Trial Court. The Revisional Court has exceeded jurisdiction in allowing the partner to examine himself.

5] Having heard the learned counsel for the petitioner and perused the record, in my judgment, there is no jurisdictional error in the making of the impugned order. In the first place, the Revisional Court has rightly relied upon the ruling in the case of *Janki Vashdeo Bhojwani vs. Indusind Bank Ltd.*¹, in which it is held that matters which are in the personal knowledge of a party, have to be deposed to by such party personally. Accordingly, it cannot be said that there were *lacuna* in the deposition of the constituted attorney and the attempt was to fill in such *lacuna*.

6] Further, this is not a case where a principle set out in Order XVIII Rule 3A of the CPC can be said to have been breached. It is true that the Revisional Court has not in so many word, scanned the

1 2005 (1) Mh.L.J. 1170

reasons on record as contemplated by Order XVIII Rule 3A of the CPC. However this does not mean or imply that the reasons do not exist. The Trial Court has referred to the aspect of witness being held up in Hyderabad on account of commencement of new business. That apart, at least the record does not bear out that the petitioner herein objected to the cross-examination of the constituted attorney of the firm, on the ground that the party itself should have entered the witness box in the first place.

7] The landlord in the present case, had not objected to the partner of the firm deposing in the matter. True, the petitioner herein may not be only a formal party. However, there is no reason or justification for the petitioner to object to the evidence of the partner of the firm. Ultimately, the petitioner will be afforded full opportunity to cross-examine such deponent or witness.

8] Accordingly, there is no error of jurisdiction. This petition is dismissed. There shall be no order as to costs.

9] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)