

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12398 OF 2015**

National Education Society V/s. Vasant Gardens Co-operative Housing Society Ltd. and Ors.	...Petitioner ...Respondents
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Mr. Chirag J. Shah i/b. Mr. Jitendra J. Shah for the petitioner.

**CORAM : R. G. KETKAR J.
DATE : 11th DECEMBER, 2015.**

P.C.:

1. Heard Mr. Chirag J. Shah, learned counsel for the petitioner.

2. By this petition under Article 227 of the Constitution of India the original plaintiff has challenged the order dated 10/9/2015 passed by the City Civil Court below Exh.59 in Suit No.1682/2010 whereby the learned Trial Judge partly allowed the application filed by the petitioner herein (the plaintiff) u/s.151 of CPC for granting permission to reexamine witnesses who were examined earlier.

2. In paragraph 3 of the application, the plaintiff contended as under:

“Since the case has now been re-opened, the Plaintiffs desire to file additional evidence of a new witness, Mr. Mhatre, an Architect on behalf of the Plaintiffs. The said Architect has expertise regarding municipal plans, being personally acquainted in such matters. As such the said Architect would be able to explain to the Hon'ble Court the nitty gritty of the Plaint relating to the ingress and egress and right of way to the suit plot of land as described in the plan sanctioned and approved by MCGM. The Architect's witness is extremely essential to prove the Plaintiffs case.”

3. In paragraph 4 and 5 of the impugned order, the learned Trial Judge recorded that on 6/5/2015, the plaintiff filed evidence closure pursis (Exh.54). The defendants filed an application (Exh.55) for framing additional issue. After hearing both sides, the Court framed the additional issue, being Issue No.7, on the point of limitation. The evidence of defendants was yet to start. It is at that stage, the plaintiff filed application (Exh.59) for reexamining witnesses who were already examined and for examining witnesses on the point of additional issue of limitation.

4. The learned Trial Judge held that as the plaintiff's evidence is closed, he has right to lead evidence only on the issue of limitation and accordingly permitted the plaintiff to examine/re-examine the witnesses only on the point of limitation.

5. In paragraph 5 of the impugned order, the learned Trial Judge rejected the plaintiff's request to examine the Architect, Mr. Mhatre who was earlier not available and is now available.

6. At this stage, learned counsel for the petitioner submits that the petitioner may be permitted to examine witnesses on the issue of limitation and for that purpose he will take out proper application seeking permission to examine/reexamine witnesses only on the point of limitation and along with that application, he will also enclose affidavit of examination in chief of that witness restricting the evidence only on the point of limitation. In other words, the contentions raised in paragraph 3 of application Exh.59 hereinabove will not form part of the affidavit in examination. In view thereof, the plaintiffs are allowed to

make an application on the above lines and if such application is filed, the learned Trial Judge shall decide it on its own merits. All contentions of the parties in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)