

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO.5243 OF 2015**

Dhirajlal Raishi Chheda. ] ... Petitioner

Versus

Raishi Shivji Chheda (Dead) represented ]  
 through his legal representative ]  
 Mithiben Raishi Chheda. ] ... Respondent

**WITH**

**CIVIL WRIT PETITION NO.5244 OF 2015**

Dhirajlal Raishi Chheda. ] ... Petitioner

Versus

Raishi Shivji Chheda (Dead) represented ]  
 through his legal representatives ]  
 Smt. Mithiben R. Chheda and Ors. ] ... Respondents

Mr. V. Y. Sanglikar a/w Mr. Dipen Furia i/b M/s. Shah and Furia Associates for Petitioner.

Mr. Mihir Desai, Senior Advocate, i/b Mr. Sarnath Sariputta Pramod with Mr. Swaraj Jadhav for Respondents.

**CORAM :- M. S. SONAK, J.**

**DATE :- JUNE 24, 2015**

**P. C. :-**

1. These two petitions can be disposed of by a common order.

2. Both these petitions challenge orders dated 11/02/2013 and 02/12/2014 made by the Small Causes Court, Mumbai, clarifying that the Defendant in the suit is permitted to cross-examine the Plaintiff, beyond a period of one day, in case the cross-examination is not concluded in one day.

3. Mr. Sanglikar, learned Counsel for Petitioner, by placing reliance upon the previous orders made by this Court in relation to the very same proceeding, pointed out that this Court has taken note of the dilatory strategies being adopted by the Defendant, as a result of which the cross-examination of the Plaintiff has not concluded, despite the fact that the examination-in-chief of the Plaintiff had commenced sometime in the year 2009. Mr. Sanglikar pointed that in one of the Writ Petitions presently being considered, almost 21 adjournments were applied for by the Defendant before the trial Court, for the purposes of cross-examination and in the other, 26 adjournment were applied for. In view of such conduct of the Defendant, Mr. Sanglikar submits that there was no question of grant of any further indulgence by the trial Court, which is precisely what the trial Court has done by making the impugned order. Besides, Mr. Sanglikar relying upon the order of this Court dated 22/01/2013 in Writ Petition Nos. 671 of 2013 and 672 of 2013, has submitted that para 4 thereof makes it clear that the Defendant or his Advocate was required to remain present on 31/01/2013 at 10.30 a.m. to cross-examine the Plaintiff and further, such cross-examination was required to be restricted for the said date alone and no further.

4. Mr. Mihir Desai, learned Senior Counsel for Respondent-Defendant, on the other hand, submitted that the trial Court itself has recorded that the Plaintiff, on account of his evasive answers in the course of cross-examination, was contributing to the delay. Mr. Desai further submitted that there is nothing in the order dated 22/01/2013 which requires the Defendant or his Advocate to complete the cross-examination of the Plaintiff on 31/01/2013 itself and it is because of such insistence on the part of the Plaintiff, that the Defendant was constrained to take out application seeking clarification as to continuance of cross-examination, in case such cross-examination were not to complete on 31/01/2013. For such delay, Mr. Desai submits that the Respondent-Defendant is not to blame and in any case, there is no warrant to interfere with the impugned order which merely permit the Defendant to continue with the cross-examination, in case the cross-examination is not concluded within one day.

5. Having heard the learned Counsel for parties and perused the record, although there is no reason to interfere with the impugned order, there is, in the peculiar facts and circumstances, some reason to make direction as to the progress of the cross-examination. Order dated 22/01/2013, does not, if read in its entirety, place any embargo upon continuance of cross-examination beyond one day. However, looking to the record of the case, it is clear that this Court was anxious that no further adjournments are applied for by the Defendant or his Advocate and indeed they commence the cross-examination on 31/01/2013.

6. Nevertheless, the record, as reflected from the order made by both the trial Court as also this Court, does indicate that the Defendant is delaying the proceedings without sufficient cause. Though it was expected by the order of this Court dated 22/01/2013 that cross-examination commences on 31/01/2013 and is concluded, if not not on the same day, at least within some reasonable period thereafter, a situation has arisen when the cross-examination could not even commence on 31/01/2013. Time was spent in making, pursuing and arguing application seeking clarification on the issue as to whether the cross-examination was required to be concluded in a day or whether it could spill over some other day. Valuable judicial time was spent in the process including arguments, orders, review petitions and finally petitions in this Court upon such unproductive issue. Record also discloses that the Defendant has obtained 21 adjournments in one matter and 26 adjournments in the other, mainly at the stage of cross-examination. In such circumstances, suitable directions are required to be issued in the interest of justice so that the Defendant commences cross-examination on 29/06/2015 at 2.45 p.m., without any fail or excuse. This is the date already fixed by Small Causes Court.

7. The learned Small Causes Court is required to allot the entire afternoon session on 29/06/2015 for the purposes of such cross-examination. Besides that, if possible, the learned Small Causes Court to permit the Defendant to continue with the cross-examination in the afternoon session on 30/06/2015 (entire session). If this date

is not convenient to the learned Small Causes Court, the learned Small Causes Court is at liberty to fix another date, in the immediate succeeding week. Considering the peculiar facts and circumstances of the case and the manner in which the proceedings are going on, the learned Small Causes Court to look to its own convenience in the matter of fixing of dates, regardless of any reason or excuses that may be put up by the parties or their Advocates. The Defendant to complete cross-examination by the second session, as this will effectively give the Defendant two complete sessions for completion of the cross-examination. In case, the learned Small Causes Court is of the opinion that yet another session be allotted for further cross-examination, the learned Small Causes Court is at liberty to grant such permission. However, such permission may be granted, only if the learned Small Causes Court is satisfied that the Defendant has proceeded with the cross-examination with due diligence and seriousness and further, the Plaintiff who is being cross-examined in the matter, has not cooperated in the course of such cross-examination. It is however made clear that the cross-examination, in the peculiar facts and circumstances of the present case, will not exceed three full sessions.

8. In order to avail the benefit of this order, however, the Defendant is required to be saddled with costs. As indicated earlier, the Defendant, in the course of cross-examination proceedings, has applied for and obtained 21 and 26 adjournments, the examination-in-chief commenced in the year 2009 and the cross-examination is yet

to be completed. Despite strong observation in previous orders of this court, this Court has virtually indulged the Defendant and the Defendant appears to have gained an impression that such indulgence can be abused. The Defendant accordingly to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) (cumulatively in both the petitions) to the Petitioner. Such costs to be deposited before the learned Small Causes Court on or before 29/06/2015 and once deposited, the Petitioner shall be at liberty to withdraw the same.

9. The learned Counsel for parties state that there are two different suits, from which the petitions arise. It is therefore clarified that time schedule as aforesaid, shall be in respect of L. E. Suit No. 141/173 of 2008 and the learned Small Causes Court is directed to fix a time schedule on the similar line in R. A. D. & E. Suit No.720/1334 of 2004. In fixing the time schedule in the second suit, the learned Small Causes Court to take into consideration the observations made in this order.

10. Further, the learned Counsel for parties state that there are already orders for expeditious disposal of two suits made by the Appellate Bench of the Small Causes Court. The same orders are endorsed by this Court and accordingly, the learned Small Causes Court to dispose of the said two suits expeditiously.

11. Both the Writ Petitions are disposed of in the aforesaid terms.

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

**(M. S. SONAK, J.)**