

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 795 OF 2016

Vivek Enclave Co-operative
Housing Society Ltd. .. Petitioner
vs.
Prajapita Brahma Kumaris
Ishwariya Vishwa Vidyalaya & Anr. .. Respondents

Ms Sumedha Rao for Petitioner.
Mr. S. Kamdar – Senior Advocate and Helina Desai i/b. Wadia
Gandhy & Co. for Respondent No. 1.
Mr. S. D. Rayrikar – AGP for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 20 JANUARY 2016

P.C :

1] The challenge in this petition is to the order dated 7 January 2016, by which the Illrd Co-operative Court, Mumbai, has rejected the petitioner's application at Exhibit '60' seeking issue of witness summons to Dadi Janki, who according to the petitioner, will be almost 100 years of age.

2] Ms Sumedha Rao, the learned counsel for the petitioner has submitted that the impugned order is almost entirely based upon the opposition of the respondents. She submits that under the provisions of Order XVI Rule 1 of the CPC, there is no question of the respondents either being heard or being permitted to raise

opposition to the request for issuance of witness summons. Ms Rao, thereafter made reference to the order dated 21 November 2015, made by the Illrd Co-operative Court, by which the petitioner's application seeking interim mandatory injunction was rejected. She pointed out that in the said order, the Co-operative Court had held that the registered deed of transfer dated 19 April 2010 carries *prima facie* presumption of transaction, unless the contrary is established by the petitioner. This observation was in the context of the case of the petitioner that the registered deed of transfer dated 19 April 2010 is a fraudulent document. Ms Rao submitted that the transfer deed dated 19 April 2010 refers to Dadi Janki as the transferee. Therefore, she submits that the examination / cross-examination of Dadi Janki is vital for establishing that the transfer deed dated 19 April 2010, is indeed a fraudulent document. Finally, Ms Rao submitted that the disputant i.e. Prajapita Brahma Kumaris Ishwariya Vishwa Vidyalaya is an unregistered organization and therefore, not entitled to even maintain a dispute before the Co-operative Court. She submitted that in order to establish this aspect as also in order to establish the link, if any, between the persons who purport to represent this body and Dadi Janki, who is said to be the Administrative Head, it is necessary to issue witness summons to Dadi Janki. For all these reasons, Ms Rao submitted that the impugned order is liable to be set aside.

3] Upon hearing the learned counsel for the parties, perusing the record, as well as the impugned order, in my judgment, no case is made out to interfere with the impugned order. In the first place, it appears that the application made by the petitioner proceeds on the basis of a misconception that Dadi Janki was one of the executants to the deed of transfer dated 19 April 2010. The perusal of the copy of the deed made available by Ms Rao, makes it clear that the said deed was executed by one Ashok Mohanani who has been described as a transferor. The document records transfer in favour of Prajapita Brahma Kumaris Ishwariya Vishwa Vidyalaya and thereafter recites that the Administrative Head of the said body, at the relevant time was Brahma Kumari Janki. The document does not bear the signature of Brahma Kumari Janki.

4] Secondly, application, by which witness summons came to be applied for contains not even a brief reference to the possible reasons as to why the petitioner seeks to examine a witness, who according to them, will today be 100 years of age. The disputant, has already examined some witnesses on their own behalf and thereafter, opportunity of cross-examination has also been availed by the petitioner. The impugned order also records that the disputant shall have to face the consequences, if any, arising out of the non examination of Dadi Janki. However, in the fact situation of the present case, it cannot be said that the petitioners have an

unqualified right to examine the said witness or that the impugned order is entirely based upon the opposition recorded by the respondents. Perusal of the impugned order would indicate that the Co-operative Court has exercised its own discretion in the matter. Such exercise cannot be said to be vitiated by any perversity. The Co-operative Court has assigned cogent reasons as to why the discretion was not being exercised. The Co-operative Court has also held that though, there can be no bar to seeking a witness summons to the opposite party, such witness summons can never be claimed as a matter of right and without explaining, at least briefly, the relevance and purpose for which the witness summons is being applied for.

5] The issue as to whether the disputant is an unregistered body and whether any dispute is maintainable at its behest, is obviously left open even by the impugned order. For that purpose, it is not at all necessary to examine Dadi Janki.

6] For all these reasons, there is no case made out to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)