

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1845 OF 2016

Vikas Narayan Dalvi

.. Petitioner

Versus

Mrs. Vimala Ramesh Kothari and others

.. Respondents

Mr. Rakesh Agrawal, for the Petitioner.

Ms. Sukruta A. Chimalkar, for the Respondent Nos.1, 2 & 4.

CORAM : R.M. SAVANT, J.

DATE : 24th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 17.12.2015 passed by the Learned Judge of the Small Causes Court, by which order the application Exh.52 filed by the Plaintiffs to produce the fresh Power of Attorney dated 14.10.2015 came to be allowed.

2. It seems that the suit as originally filed was based on the strength of the Power of Attorney dated 18.02.2008 executed in favour of one Jitendra Kothari. The Plaintiffs witness i.e. PW-1 Jitendra Kothari was under cross-examination and certain admissions have come in his evidence which are relating to the said Power of Attorney on the basis of which the suit was filed. In the midst of the cross-examination of the PW-

1, the Plaintiff filed instant application Exh.52 for being permitted them to produce fresh Power of Attorney executed in his favour on 14.10.2015. The said application was opposed on the ground that the same would result in lacunas in the evidence of the Plaintiff being filled up or the mistake in filing the suit being cured. The Trial Court did not countenance the aid objection on the ground that the evidentiary value of the fresh Power of Attorney will be considered at the appropriate stage on merits. Secondly, that merely allowing production of the document does not amount to the Plaintiff being allowed to cure the irregularities which have occurred at the time of filing of the suit. In my view, having regard to the said observations made by the Trial Court, interdiction of this Court in its Writ Jurisdiction is not warranted. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]