

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6268 OF 2015**

Haranyakant Govind Samant

..Petitioner

Vs.

**Avinash H. Narvekar (deceased)
through LRs**

..Respondents

Mr. S.R. Ganbavale a/w Ms Pooja Joshi for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 17th FEBRUARY, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-1-2015 passed by the Learned Judge of the Small Causes Court by which order the application Exhibit 59 for recall of the Defendant as also for being permitted to lead evidence of the witness from Ruby Hospital Thane, came to be allowed.

2 The Suit in question has been filed on the ground of non user and subletting. It is the case of the Defendant that he had shifted to Thane and was taking medical treatment in Ruby Hospital Thane and therefore was not residing in the suit premises for the period during he was taking treatment. The Defendant had produced documents in respect of the said treatment in the list of documents which were at Sr. Nos.3, 4, 5, 6 and 7. The said documents being private documents were marked as Articles Y, Y-1, Y-2, Y-3 and Y-4 which

pertains to the medial report of the original Defendant who has expired. The Defendant filed the instant application Exhibit 59 on the ground that she has found more documents of the relevant period and that she wants to produce the said documents and call further witnesses to prove them. The said application was opposed to on behalf of the Plaintiff considering the stage at which the Suit was. The Trial Court considered the said application and allowed the same by the impugned order dated 29-1-2015 by imposing costs. The Trial Court was of the view that though Rule 17 of Order 18 of the Civil Procedure Code has been deleted, recourse would always be taken to Section 151 of the Civil Procedure Code, when no specific provision is available in the Civil Procedure Code. The Trial Court was of the view that in the interest of a fair trial and a reasonable opportunity being granted to the Defendant that the application, was required to be allowed as the ultimate endeavour is to arrive at the truth.

3 In my view, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]