

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7267 OF 2016**

Yogesh Kantilal Kusumgar, HUF
through its Karta Yogesh Kantilal
Kusumgar

Petitioner

Vs

Shashank Prainlal Shroff

.. Respondent

Mr. Tushar Bhavsar a/w Ankit Rajput, R.Bhatt i/b. Manoj Bhatt,
Advocates for Petitioner.

Mr. R.D.Vora, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 01/07/2016

PC:

1. Heard Mr.Tushar Bhavsar, learned counsel for the petitioner and Mr. R.D.Vora, learned counsel for the respondent at length.
2. Rule. Mr. Vora waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 7.5.2016 as reflected in the Roznama dated 7.5.2016, thereby, closing evidence of the defendant. The suit is now kept for final arguments.
4. Respondent had instituted suit in the year 1993. On 7.5.2016, the petitioner, hereinafter referred to as 'defendant', made application for adjournment on the ground that aggrieved

by order dated 2.4.2016 passed by the learned trial Judge blow Exh.126, he has preferred Revision Application No. 54 of 2016 before the Appellate Bench of the Small Causes Court and the same is pending. By order dated 7.5.2016, the learned trial Judge rejected the application for adjournment on the ground that the matter is old. There is no stay to the Appellate Court order and hence the Court was not inclined to grant adjournment and the application was rejected. On the same day, the learned trial Judge closed the evidence of the defendant. Against this order, the defendant has instituted the present petition.

5. After arguing the matter for quite some time, Mr. Bhavsar states that tomorrow is the date fixed before the trial Court. Mr Bhavsar assures that the defendant will keep his witness present in the trial Court for cross examination by the plaintiff's Advocate. Mr.Vora assures that the plaintiff will proceed with the cross examination.

6. In view thereof, the order dated 7.5.2016 closing evidence of the defendant is set aside. It is made clear that pendency of Revision Application No. 54 of 2016 filed by the defendant challenging the order dated 2.4.2016 below Exhibit 126 will not come in the way of the trial Court form proceeding with the suit.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)