

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION ST. NO. 13929 OF 2015
WITH
CIVIL APPLICATION ST. NO.27913 OF 2015**

Hemlata Manilal Gosar

..Petitioner

Vs.

Morarji Hariram & Ors

..Respondents

Ms Gunjan Jaykar a/w Mr. S. I. Jaykar for the Applicant

CORAM : R. M. SAVANT, J.

DATE : 5th JANUARY, 2016

P.C.

1 The above Petition takes exception to the order dated 27-3-2015 passed by the Appellate Bench of the Small Causes Court, by which order, the Revision Application No.374 of 2014 came to be rejected and resultantly the order dated 27-8-2014 passed by the Learned Judge of the Small Causes Court came to be confirmed.

2 The Petitioner herein is the original Defendant No.1 and the Respondent No.1 herein is the original Plaintiff who has during the pendency of the proceedings expired on 7-5-2015 and in respect of whose heirs the above Civil Application has been filed so as to bring them on record.

3 As indicated above, the Respondent No.1 is the original Plaintiff.

The instant proceedings have arisen out of the cross-examination of P.W.-2 who is the court commissioner appointed by the Court. It appears that an order of closure of cross-examination of the said P.W.-2 came to be passed against the Defendant No.1 i.e. the Petitioner herein on 3-7-2013 in view of the fact that though the witness was present in the Court the Defendant No.1 had failed to cross-examine the said witness. The Defendant No.1 thereafter filed an application for setting aside the order of closure of cross-examination of P. W.-2 which application came to be allowed by the Trial Court by order dated 19-8-2013 subject to the payment of costs of Rs.2500/- by the Defendant No.1 to the Plaintiff as well as the payment of bhatta. It appears that the process fees were not paid and the Defendant No.1 filed the instant application Exhibit 65 for a direction to the Plaintiff to take necessary steps for issuance of witness summons meaning thereby the Defendant No.1 sought a direction against the Plaintiff that he be directed to pay the process fees. The said application came to be rejected by the Learned Judge of the Small Causes Court by order dated 27-8-2014.

4 The gist of the reasoning of the Trial Court was that since the no cross order passed against the Defendant No.1 has been set aside at his behest, it is the Defendant No.1 who would have to pay the process fees. The Trial Court did not countenance the submission urged on behalf of the Defendant No.1 based on paragraph 138 of the Civil Manual as according to the Trial

Court the fact situation in the present case would not be covered by the said paragraph 138 as in the instant case it is on account of default committed by the Defendant No.1 that the order of closure of cross-examination came to be passed against him, which order has been set aside at his behest by imposing conditions. The Trial Court accordingly rejected the said application Exhibit 65.

5 The Defendant No.1 thereafter carried the matter by way of a Revision being No.374 of 2014. The Appellate Bench of the Small Causes Court rejected the Revision Application both on the ground of its maintainability as also on merits. In so far as the maintainability is concerned, the Appellate Bench of the Small Causes Court held that the order passed by the Trial Court was purely interlocutory and therefore does not constitute a judgment so as to entitle the Defendant No.1 to invoke the revisionary jurisdiction. In so far as the merits are concerned, the Appellate Bench of the Small Causes Court has reiterated the findings of the Trial Court in so far as the order dated 19-8-2013 is concerned, the Appellate Bench of the Small Causes Court has thereby endorsed the view taken by the Trial Court that since it is at the behest of the Defendant No.1 that the no cross order passed against him is set aside, it is the Defendant No.1 who would be liable to pay the process fees. The Appellate Bench of the Small Causes Court has held that the said order being procedural, the revisionary jurisdiction of the Small Causes Court under Section 34 could not be invoked.

6 The Learned Counsel appearing for the Petitioner would seek to reiterate the case of the Petitioner before the courts below, in so far as the payment of process fees by the Plaintiff is concerned. In my view in the light of the concurrent orders passed by the courts below and having regard to the peculiar facts and circumstances of the present case, there is no illegality or infirmity in the order passed by the courts below for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

6 In view of the fact that the above Writ Petition is dismissed, there is no warrant to consider the above Civil Application for bringing the heirs of the Respondent No.1 i.e. the original Plaintiff on record. The Civil Application to accordingly stand disposed of.

[R.M.SAVANT, J]