

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10948 OF 2015

MRS. VANDANABEN VINODBHAI
NAGARSHETH

...Petitioner

Versus

KULIN MORARJI GALA AND ORS.

...Respondents

....

Mr. Atit Shukla a/w. Jayesh Desai, Hema Desai and Sanaaya Irani, i/b. Singhi & Co. for the Petitioner.

Mr. Sham Walve, Advocate for respondent Nos.1 and 3 to 6.

Mr. N.C. Parekh a/w. Mr. Nirav J. Marjadi, Ms. Nikita Behl i/b. Mansukhlal Hiralal & Co., for respondent No.11.

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CORAM : R. G. KETKAR, J.

DATE : 18th MARCH, 2016

P.C.

1. Heard Mr. Atit Shukla, learned Counsel for the petitioner, Mr. Sham Walve, learned Counsel for respondent Nos.1 and 3 to 6 and Mr. N.C. Parekh, learned Counsel for respondent No.11, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 4.11.2015 as

also order dated 4.7.2015 as also order dated 5.10.2015 passed by learned Judge, presiding over court room No.2 of Bombay City Civil Court at Greater Bombay. By order dated 4.7.2015, learned trial Judge rejected the application made by the plaintiff under Order 14 Rule 4(2) of Code of Civil Procedure, 1908 (for short, 'CPC') for appointment of the Court Commissioner to conduct the cross-examination of the plaintiff at Ahmednagar. By order dated 5.10.2015, the learned trial Judge rejected the application for appointment of Court Commissioner on the ground that earlier application for similar relief was rejected on 4.7.2015 and, therefore, present application is not maintainable.

3. Mr. Shukla submitted that when earlier the learned trial Judge rejected the application on the ground that though the plaintiff claimed that she is ailing, she has not produced any medical certificate to substantiate the said contention. The plaintiff, therefore, filed application dated 1.10.2015 and enclosed certificate dated 18.9.2015 issued by the medical practitioner. The plaintiff prayed for appointment of Ms. Harshida Darji, Advocate or any other Advocate practicing in Ahmedabad as a Court Commissioner to submit the evidence of

further cross-examination of the plaintiff. The learned trial Judge without considering the medical certificate rejected the application. He submitted that the age of the plaintiff is around 85 years and it is not possible for her to travel all the way from Ahmedabad to Mumbai for facing the cross-examination.

4. On the other hand, learned Counsel for the respondents supported the impugned order. They submitted that after considering the material on record including the medical certificate, by order dated 3.11.2015, the learned Single Judge directed the plaintiff to remain present before the trial Court on 30.11.2015 for the purpose of cross examination. It was further made clear that if the plaintiff fails to remain present, her evidence on examination-in-chief shall not be taken into consideration.

5. Mr. Shukla submitted that the plaintiff is willing to appear in the Court on 11.4.2016 for facing the cross-examination. He submitted that appropriate direction may be given to the learned trial Judge so that her cross-examination can be completed on or before 13.4.2016.

6. In view thereof, the petition is disposed of in the following terms :

- (i) The plaintiff shall remain present in the trial Court on 11.4.2016. In case, the plaintiff does not remain present for cross-examination on 11.4.2016, her evidence in examination-in-chief shall be discarded.
- (ii) The advocates for the defendants will endeavour to complete her cross-examination latest by 13.4.2016.
- (iii) Petition is disposed of in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)