

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10900 OF 2015

Mr. Harbin Navinchandra Jhaveri : Petitioner
versus
Kirtikumar Girdharlal Shah and ors. : Respondents.

Mrs. Sonal H. Jhaveri, Constituted Attorney of the Petitioner present in person.
Mr. R R Singh i/by Jaiprakash Shukla for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 07th January 2016

P.C.

1 By the above Writ Petition the Petitioner challenges two orders both dated 29/10/2015 passed by the Trial Court i.e. the learned Judge of the Small Causes Court, Mumbai. The said orders are passed on the Applications (Exhibit 45 and 47) filed by the Petitioner.

2 It appears that the RAD Suit No.26 of 2010 filed by the Plaintiff was compromised and Consent Terms were entered into between the parties. However, since it is the case of the Defendants that the Plaintiff i.e. the Petitioner herein was not complied with the Consent Terms that they filed Marji Application No.533 of 2011 for taking against the Plaintiff. The said Marji Application is being adjudicated upon and it is in the said Application that the cross examination of the D.W.No.1 was being undertaken by the

Plaintiff i.e. the Petitioner herein. Since the Plaintiff had applied for time for further cross examination of the D.W.No.1 vide Application (Exhibit 45) on the ground that the Plaintiff was sick, the Trial Court rejected the said Application (Exhibit 45) and close the cross examination of the D.W.No.1 by the Plaintiff by order dated 29/10/2015. The Plaintiff thereafter filed the Application (Exhibit 47) for stay of the said order passed on the Application (Exhibit 45) so as to enable the Plaintiff to approach the higher Court. The said Application (Exhibit 47) came to be rejected by the Trial Court by imposing costs of Rs.500/-. As indicated above, it is the said two orders both dated 29/10/2015 which are taken exception to by way of the above Writ Petition.

3 The Power of Attorney of the Plaintiff i.e. the wife of the Plaintiff Mrs. Sonal Jhaveri would contend that it is on account of indisposition of the Plaintiff on 29/10/2015 that the Application (Exhibit 45) came to be filed on behalf of the Plaintiff seeking time to further cross examine the D.W.No.1. The Trial Court has therefore wrongly rejected the said Application (Exhibit 45).

4 The learned counsel for the Respondents opposes the above Petition but ultimately submits to the orders of the Court.

5 In my view, in the interest of justice and fair trial it would be just and proper to permit the Plaintiff to further cross examine the D.W.No.1.

However, the same would have to be done within the time that would be stipulated by this Court. Hence the following directions :-

- A] The impugned orders both dated 29/10/2015 passed by the Trial Court on Exhibit 45 and Exhibit 47 along with the direction to pay costs of Rs.500/- are hereby set aside and the Plaintiff is directed to cross examine the D.W.No.1 on 28/01/2016 when the said Marji Application is to come up for hearing. The cross examination of the D.W.No.1 would be continuous till it is completed and no adjournment would be granted on any ground since the hearing of the said Marji Application is already expedited.
- B] The Plaintiff would be entitled to file his affidavit of examination in chief. The same to be done on or before 09/02/2016. No further time would be granted as it is expected that by that time the cross examination of D.W.No.1 would be completed.
- C] If the Plaintiff does not remain present on 28/01/2016 the benefit of the instant order would not enure to the Plaintiff and in that even the orders passed on Exhibit 45 and Exhibit 47 would continue to operate.

D] It is clarified that the cross examination would be by the Plaintiff himself and not by his Power of Attorney.

E] With the aforesaid directions the above Writ Petition is disposed of.

[R.M.SAVANT, J]