

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 328 OF 2016**

Mr.Mishrilal Chagganlal Jain

..Petitioner

Vs

1. Mr.DamuNathu Urade and Anr

.. Respondents

Mr. Vishesh Kalra a/w Mr Subit Chakrabarti i/b Vidhi Partners,
Advocate for Petitioners.

Mr.Manoj Tiwari a/w Mr. Prashant Gogal, Advocate for Respondent
no.2

CORAM : R.G.KETKAR,J.

DATE : 12/01/2016

PC:

1. Heard Mr. Vishesh Kalra, learned counsel for the petitioner and Mr. Manoj Tiwari, learned counsel for respondent no.2 at length. Learned counsel for the parties state that respondent no.1 has expired. In view thereof, Mr Kalra seeks leave to delete respondent no.1. On the motion made by Mr. Kalra, leave as prayed for is granted. Amendment shall be carried out forthwith.

2. By this petition under Article 227 of the Constitution of India, original plaintiff has challenged the order dated 27.11.2015 passed by learned Jt. Civil Judge, Jr. Dn., Vasai below Exhibit 118 in Regular Civil Suit No.202 of 2003. By that order, the learned trial Judge rejected the application Exh.118 made by the plaintiff for exhibiting original document.

3. The plaintiff instituted suit for perpetual injunction. Initially, issues were framed on 5.4.2005. On 26.10.2015, issues were

recast. One of the issues is whether the suit is within limitation. The plaintiff has also filed affidavit of evidence dated 10.8.2007. After recasting all the issues, instead of filing affidavit only on the point of limitation, the plaintiff filed application for exhibiting original document. By the impugned order, the learned trial Judge rejected the application.

4. Mr. Tiwari submitted that defendant no.2 has no objection for the plaintiff filing affidavit only on the point of limitation without enclosing any document.

5. In view thereof, Mr Kalra seeks permission to withdraw affidavit dated 20.11.2015 (Exh.116) with liberty to file fresh affidavit only on the point of limitation. In view thereof, no case is made out for interfering with the impugned order. However, the petition is permitted to withdraw additional deposition affidavit dated 20.11.2015 (Exhibit 'L', pages 52 to 56) Exhibit 116 and is granted liberty to file affidavit only on the point of limitation without enclosing any document. If the plaintiff wants to file any document, he will do it with leave of the Court. Subject to this, Petition fails and the same is dismissed.

6. All parties including trial Court shall act on the authenticated copy of this order. Order accordingly.

(R.G.KETKAR, J.)