

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL (L) NO. 301 OF 2016
WITH
NOTICE OF MOTION (L) NO. 2469 OF 2016
IN
APPEAL (L) NO. 301 OF 2016**

Sunil Mahendra Shah .. Appellant
versus
Kavita Sandeep Shah & Ors. .. Respondents

Mr. Ajit Karwande for Appellant.

Mr. Ketan Trivedi – Commissioner for Taking Accounts present.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 31 AUGUST 2016

P.C.:

1] The challenge in this appeal is to the order dated 29 July 2016 made by the learned Single Judge. By the impugned order, report of the Commissioner dated 19 July 2016 for accounts has been taken on record after condoning the delay in filing thereon. Further, the impugned order, after noting that the appellant (defendant No.2) having refused to step into the witness box to prove his documents, the evidence of the appellant stands closed.

2] Mr. Ajit Karwande, learned counsel for the appellant, submits that there is apparent conflict between the impugned order and the order dated 4 March 2013 made in Notice of Motion No. 105 of 2012. Further, Mr. Karwande submitted that even though the appellant may have failed to enter into the witness box, learned Single Judge was required to follow the ruling of the Full Bench reported in 2008 (2) Mah.

L.J. 886, in the matter of taking of accounts, rather than except the Commissioner's report. On this ground, Mr. Karwande urged interference with the impugned order.

3] We have considered the submissions of learned counsel for the appellant. We have also perused the record and the impugned order. In our judgment, since the appellant despite several opportunities, failed to step into the witness box and make himself available for purpose of cross-examination, the appellant cannot, at this stage, complain in the matter of closure of his evidence or for that matter taking on record the report of the Commissioner. Upon perusal of the order dated 4 March 2013, we are not satisfied that there is any conflict between the directions issued in the said order and the directions issued in the impugned order.

4] In any case, there is no necessity to entertain the present appeal, particularly because it is always open to the appellant to raise all such grievances, in case, the main suit is ultimately decided against the appellant and the appellant, chooses to institute a substantive appeal questioning such decree. Liberty to this effect, accordingly, is reserved to the appellant.

5] With liberty as aforesaid, this appeal as well as notice of motion are hereby dismissed.

CHIEF JUSTICE

(M. S. SONAK, J.)