

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9800 OF 2017
(Anusayabai Kashiram Bhange Vs. The State of Maharashtra and
others)

Mr.A.D.Hande, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for the respondents/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 20/01/2017 by which the application Exh.46, seeking appointment of a Court Commissioner to record the evidence of the plaintiff, has been rejected.
2. Learned Advocate for the petitioner has strenuously criticized the impugned order. He submits that the petitioner / plaintiff is about 70 years old, she is suffering from knee pain, asthma and hypertension. It is contended that she cannot walk properly and certain medical reports are placed on record.
3. Grievance is that the Trial Court has rejected the application without considering these hardships.

4. I find that appointment of a Court Commissioner for recording the deposition of the plaintiff is not a formality. The Court Commissioner has to travel alongwith the defendants and their advocates and the staff of the Court to the village where the petitioner resides. The recording of evidence has to be conducted in such circumstances. This is bound to be cumbersome for the defendants as well as their lawyers. It is, therefore, in exceptional and compelling circumstances that such an application can be allowed.

5. The Trial Court has recorded that besides the word of the mouth / averments in Exh.46, neither an affidavit is filed supporting the application, nor any medical record was produced to convince the Court that the plaintiff is confined to her bed and is unable to rise from the bed.

6. In the absence of any material before the Court, an order of such nature of recording evidence of a litigant at his/her village cannot be passed merely because the plaintiff contends that he or she is unwell.

7. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)