

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7334 OF 2014
(Vijayabai Bajranglal Jaiswal and another Vs. Jitendra Jaiswal and others)

Mr.H.V.Patil, Advocate for the petitioners.
Mr.A.S.Bajaj, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 20/06/2017

PER COURT :

1. The petitioners/original defendants, who are the mother and the brother of the original plaintiff, are aggrieved by the order dated 15/07/2014 by which the application Exh.93 filed by the original plaintiff seeking examination of a witness by appointment of a Court Commissioner under Order 26 Rules 2, 4 and 4-A has been allowed.

2. I have considered the submissions of the learned Advocates on various factors. Since there is unanimity amongst the parties to examine the concerned witness by video conferencing, I am not adverting to all the submissions put forth.

3. The respondent/plaintiff desires to examine Dr. Sriram Chandra Damaraju, who is said to be a busy doctor residing in

Hyderabad. He operates a medical center by name Laxmi Neuro Center and Nursing Home, 3-6-191/1/1, Hyderabad.

4. Though the Trial Court has passed an extensive order impugned herein, it does not appear whether the inconvenience and hardships of the defendants have been considered in the impugned order.

5. The plaintiff/respondent had merely cited a reason of “busy work schedule” which precludes the witness to travel to Hingoli for leading oral evidence. Case of the plaintiff may fall under clause (a) of Rule 4(1) under Order 26. However, it is trite that while considering the convenience of a litigant, the opponent is not to be placed in grave hardships and manifest inconvenience. Learned Advocate for the petitioners submits that the learned Advocate appearing before the Trial Court at Hingoli will have to travel to Hyderabad and cross-examine the witness only to suit the convenience of the respondents/defendants. His hardships and inconvenience have not been looked into by the Trial Court.

6. Considering the above, both the learned Advocates for the respective sides graciously stated that as recording of evidence by

Video Conferencing is now an admissible piece of evidence and is permissible, the plaintiff may make an application before the Trial Court for recording the evidence of the said witness through video conferencing by making appropriate arrangements at his costs and the petitioners/defendants would not oppose the said application and would conduct cross-examination by video conferencing.

7. Considering the above, this petition is partly allowed. The impugned order dated 15/07/2014 is quashed and set aside and application Exh.93 stands disposed of.

8. The plaintiff would be at liberty to make an application for examining the doctor named above, through video conferencing, within a period of 2 weeks. The defendants make a statement that they would not oppose the said application and would conduct the cross-examination of the said witness by video conferencing.

9. As such, the Trial Court, with the assistance of the litigating sides, would mention the modalities for conducting the examination and cross-examination through video conferencing in the presence of the Court. The wi-fi facility of the Court can be utilized for the said purpose. In the event, the said facility is not available, the Trial

Court would direct the plaintiff to make such arrangements at any appropriate place in the town at his own costs and then would appoint a Senior Advocate as a Court Commissioner, in whose presence, the examination and cross- examination of the witness would be conducted.

10. If felt appropriate, the Trial Court may direct the plaintiff to tender the affidavit of the concerned doctor in lieu of examination in chief and after giving a reasonable opportunity to the defendants to prepare themselves, order the cross-examination of the said witness through video conferencing

11. Needless to state, all expenses of the video conferencing and the arrangements for the said purpose, are to be borne by the plaintiff.

(Ravindra V.Ghuge, J.)