

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

WRIT PETITION NO. 5051 OF 2017

Mr.Ramal Advani

...Petitioner

Versus

Vashulal M. Talreja
(Since deceased) through legal heirs
Smt. Poonam Vashulal Talreja & Ors.

...Respondents

.....
Mr.Aloukik R. Pai a/w. Ms. Neuty N. Thakkar for the Petitioner.
Mr.Amar Talreja for Respondent Nos. 1 A to 1C.
.....

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 19, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 13.04.2017 passed by the learned Ad-hoc Judge, City Civil Court, Greater Bombay in Chamber Summons No. 617 of 2017 in Summary Suit No. 3734 of 2011.
3. The petitioner/ defendant no.2 had taken out the Chamber Summons for seeking permission to examine him after the evidence of other witnesses mentioned in the scheduled of the Chamber Summons.

The original plaintiff in the Summary Suit was an advocate of defendant no.2 in one arbitration matter. Now, the original plaintiff is no more and plaintiff no.2 is the legal heir of the original plaintiff. The original plaintiff has charged Rs. 30 lakhs towards his professional fees, which is incorporated in the arbitration award. As per the case of the original plaintiff, defendant no.2 is liable to pay the fees and pursuant to which inter-alia defendant no.1 had issued cheques of Rs. 30 lakhs twice in the arbitration proceeding in favour of the plaintiff advocate. The said cheques were dishonoured. The evidence of the legal heirs of the plaintiff was recorded. Thereafter, in Chamber Summons, defendant no.2 sought permission that his evidence be recorded after recording the evidence of his witnesses, but it was rejected. Hence, this Writ Petition.

4. The learned counsel for the petitioner has submitted that the Chamber Summons and the prayer made therein is very well covered under Order 18 Rule 3A of the Code of Civil Procedure, which should have been allowed by the trial Court. He argued that he has made out a case in his written statement in respect of payment towards the professional fees of the plaintiff advocate and in order to prove his contention, he needs to examine other witnesses. He has pointed out that a list of the witnesses is a part of the Chamber Summons. These

witnesses are the Bank persons, who are required to produce the bank statements of the plaintiff advocate. He has further submitted that the original plaintiff expired during the pendency of the Suit and therefore, his wife has stepped in the box as a witness. He has further argued that defendant no.2 himself may not require to step into the witness box, if he is in position to prove his case on the basis of the documents, which are called for. He has further submitted that defendant no.2 has other choice whether to lead oral evidence or not. This choice can not be taken away by the Court also. The legal heirs of the original plaintiff stepped in the witness box. However, defendant no.1, who was a party to the Arbitration Proceeding did not lead evidence. He has further submitted that this is a choice of defendant no.2 to lead oral evidence or not.

5. The learned counsel for the respondent opposed this Writ Petition. He has submitted that defendant no.2 should have submitted the list of the witnesses at the time of filing of the written statement and it is a requirement under Order 8 Rule 1 of C.P.C. He has further submitted that a summons is to be sent under Order 16 Rule 1 of C.P.C. to the witnesses, whose names are mentioned in the list, which is given alongwith written statement of the defendant. The petitioner/original defendant no.2 has failed to comply with these provisions. He has given

the list of his witnesses' alongwith Chamber Summons. The original plaintiff filed the Suit for money recovery of his professional fees. Initially, it was Summary Suit. The said Suit was converted into Regular Civil Suit after unconditional leave to defend was granted.

6. Perused the impugned order, written statement, Chamber Summons, list of the witnesses and the relevant documents as pointed out by the learned counsel for both the parties. The application is filed under Order 18 Rule 3A of C.P.C. The relevant provision of Order 18 Rule 3A of C.P.C. reads as follows:

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reason is to be recorded, permits him to appear as his own witness at a later stage.

In Rule 3A of C.P.C., the sequence of the examination of the parties and examination of the witnesses is laid down and it is to be followed. However, if any party wants to give evidence at a later stage, after examination of his/her witnesses, the party must obtain permission from the Court concerned. The Court has to record the reasons for giving permission to appear the party after his own witness at a later stage, in the witness box.

7. In sum and substance, in view of the order of examination of the parties in Suit laid down in the Order XVIII of C.P.C., first plaintiff then plaintiff's witnesses and thereafter, the defendant and the defendant's witnesses are required to enter the witness box. Generally, the sequence is not to be disturbed. In the present case, the Chamber Summons was sought for production of the documents. The trial Court has observed that the certified copies of the documents can be placed on record and the trial Court has rejected the Summons for the witness. However, the production of the documents is allowed, however a witness producing documents shall not step in the witness box to give evidence. To that extent, the order passed by the learned Judge is correct and no interference is required.

8. In view of the above, Writ Petition is dismissed accordingly.

(MRIDULA BHATKAR, J.)