

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7298 OF 2017**

Natvar Nagjibhai Parekh	...Petitioner
<i>Versus</i>	
Chandrakant Ratanshi Chheda	...Respondent

Mr Omar Khaiyan Shaikh, a/w Chetan G Mendadkar, *for the*
Petitioner.
Mr Madhusudan B Joshi, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 17th November 2017

PC:-

1. Rule. Respondent waives service. By consent, Rule returnable forthwith and taken up for hearing and final disposal.

2. The Writ Petition is directed against an order of 17th April 2017. The application before the Trial Court was for examination of the Plaintiff on commission. It was pointed out that the Plaintiff suffers serious ailment, myasthenia gravis, a particularly debilitating affliction that that severely impedes his movement. This application was for some strange reason opposed, though no conceivable prejudice was caused to the Defendant.

3. By the impugned order, the Trial Court said that since the application was moved by the Plaintiff's constituted attorney, it was not required that the Plaintiff be examined on commission. The Trial Court said that the Plaintiff should 'personally' apply for examination or engage a constituted attorney, and that since he had already engaged a constituted attorney, that constituted attorney should lead evidence.

4. The order is completely unsustainable. It is for the Plaintiff to decide whose evidence he wants to lead. His evidence cannot be shut out in preference to the evidence of one who holds his power of attorney. It is not for the Court to tell the Plaintiff that his constituted attorney and not he should be examined. There is an evident reason why the Plaintiff cannot personally come to the Court. The reason for appointing a Constituted Attorney is that the Plaintiff cannot come to court in the first place. That does not mean that the Plaintiff cannot give evidence in support of his own case. The reasoning is circular and incorrect.

5. The impugned order is quashed and set aside. The application to examine the Plaintiff of commission is permitted.

6. Rule is made absolute in these terms. There will be no order as to costs.

7. The Trial Court will act on an authenticated copy of this order.

(G. S. PATEL, J.)