

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

**APPEAL FROM ORDER NO.512 OF 2017
WITH
CAA/656/2017**

Hemkuvarben Harilal Chheda alias Shah ... Appellant

Vs.

Smt.Kalpana Girish Gala ... Respondent

Mr.Miind Gyani for the Appellant
Mr.Bholaprasad Shukla for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 28, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 8.6.2017 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai, in R.C.S. No.3787of 2013, thereby allowing further cross-examination of the plaintiff in Notice of Motion No.1415 of 2017.

2. The learned Counsel for the appellant has submitted that there is no basis for the prayer made by the defendant for further cross-examination. The evidence of the plaintiff is over. Thereafter, one more witness is examined. He further submitted

that the plaintiff has thereafter attended on four days in the Court. She is a lady, who is 81 years old. Under such circumstances, the order of recalling her cannot be justified. He further submitted that no reason is given by the defendant for further cross-examination of the witness.

3. Per contra, the learned Counsel for the Respondent has supported the order passed by the trial Court. He further submitted that in the midst of the cross-examination of the plaintiff, the matter was referred to mediation.

4. Heard the learned Counsel for the parties. Perused the roznama, which is produced by the appellant. It is stated that the plaintiff is an old lady and bedridden. She had remained present in the Court on 4 occasions. It is the suit in respect of the gift deed allegedly executed by the plaintiff and therefore, the entire evidence as such should come before the Court to adjudicate the issue properly.

5. Hence, the order of the trial Court is hereby maintained with a modification that the defendant is directed to pay cost of Rs.10,000/- to the plaintiff lady on or before 18.9.2017 and her

evidence can be recorded on commission appointed by the trial Court and the defendant shall bear the cost of the Court Commission. This evidence should be recorded on or before 25.9.2017.

6. Appeal from Order is accordingly disposed of.

7. In view of the disposal of the Appeal from Order, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)