Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10859 OF 2017

Jayesh Kumudchandra Shah & Anr ...Petitioners
Versus
Sudhir Shashikant Niphadkar ...Respondent

Mr PB Gujjar, *a/w Prayag Joshi, i/b Bipin J Joshi, for the Petitioners.*

CORAM: G.S. PATEL, J
DATED: 13th November 2017

PC:-

1. This Revision Application is against an order of 6th June 2017 by which the Trial Court quite impermissibly disallowed a perfectly valid question in cross-examination of DW-1. The question was whether the Defendant had filed a suit in respect of the premises in question against one Nirmala Shah and the Municipal Corporation. The objection that was sustained was that there was no pleading.

2. This is a complete misconception in cross-examination. The question was correctly put because the Defendant had, in respect of these very premises, filed such a suit. The suggestion was that the Defendant had in respect of these very premises filed a suit, the number of which was given, against the Municipal Corporation and another person. This was not only relevant but was a matter within a knowledge of the witness. Indeed the witness had admitted receiving a notice under Section 351 of the Mumbai Municipal Corporation Act and the Plaintiff had issued notice to the 1st Defendant to produce these documents. On the limited ground that the Plaintiff had not produced certified copies of the suit record and had no pleading about the suit against the BMC by Defendant No.1, the question was disallowed.

3. No such pleading was necessary. Even if certified copies were not produced it was perfectly legitimate to ask, as a matter of fact and as a matter of the 1st Defendant's personal knowledge, whether such a suit had been filed irrespective of whether the suit papers were tendered in evidence.

4. The order of 6th June 2017 is set aside. The question and subsequent questions in that regard will be allowed. The Trial Court will act on authenticated copy of this order.

5. The Petition is disposed of in these terms. No costs.

(G. S. PATEL, J.)