

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

**CIVIL WRIT PETITION No. 11201 OF 2015**

Abdul Gaffar Abdul Shakoor Khan

....Petitioner

Vs.

Municipal Corporation for Greater Mumbai  
and Ors.

.... Respondents

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Mr. A.M. Rajabally, for the Petitioner  
Ms. Oorja Dhond, for Respondent No.1  
Ms. Shilpa Kapil, for Respondent No.3

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**CORAM : M.S. SANKLECHA, J.**  
**TUESDAY, 8<sup>th</sup> AUGUST, 2017**

**P.C.**

1. This petition under Article 227 of the Constitution of India challenges the order dated 7<sup>th</sup> September, 2015 passed by the City Civil Court at Bombay. The impugned order rejected the Petitioner's (original plaintiff) application seeking to prohibit Respondent No.3 (original defendant No.3) from examining herself, as one Mr. Bhik Narayan had already been examined on her behalf.

2. Brief facts leading to this petition are that the petitioner had filed a suit in the City Civil Court, inter alia, against Respondent No.3. In the suit proceedings Respondent No.3 had filed an application on 3<sup>rd</sup> February, 2012 seeking

permission under Order 18 Rule 3A of the Code of Civil Procedure to examine Mr. Bhik Narayan as her witness prior to examining herself. By an order dated 15<sup>th</sup> March, 2012, the application of Respondent No.3 was allowed while under Order XVII Rule 3A of the Code of Civil Procedure specifically mentioning therein "Permission is granted to examine witness for Defendant No.3 before examination of Defendant No.3". Mr. Bhik Narayan was examined as an witness of Respondent No.3 and the cross examination was also completed on 7<sup>th</sup> July, 2014.

3. Thereafter, on 1<sup>st</sup> August, 2014, Respondent No.3 filed her affidavit of Examination in Chief. At that time, Petitioner objected to Respondent No.3 for examining herself as a witness by filing an application Exhibit '22'. This on the premise that Mr. Bhik Narayan has already been examined and cross examined, on behalf of Respondent No.3. However, the Court by the impugned order rejected the application by placing reliance upon its order dated 15<sup>th</sup> March, 2012, permitting Defendant No.3 to examine Mr. Bhik Narayan as her witness before examining herself.

4. Mr. Rajabally, learned counsel appearing for the Petitioner submits that allowing Respondent No.3 to examine herself after the examination of Mr. Bhik Narayan is over, would enable Respondent No.3 to improve upon her case and cover the lacuna after the admissions are obtained in cross examination of Mr.

Bhik Narayan.. This she cannot do in view of the fact that the Mr. Bhik Narayan had appeared under an authority dated 18<sup>th</sup> July, 2011 given by Respondent No.3 which allowed him to make depositions and give evidence on her behalf, which she undertook to ratify. Further attention is invited to the answers of Mr. Bhik Narayan in the cross examination wherein he has specifically stated that he is deposing on the basis of power of attorney from Respondent No.3 and also mentions the fact that Respondent No.3 according to him does not know anything about the case.

5. I find that the impugned order places reliance upon its earlier order dated 15<sup>th</sup> March, 2012 passed by the City Civil Court, wherein permission was specifically granted to Respondent No.3 to examine Mr. Bhik Narayan as her witness before examining herself. At that time the Petitioner did not raise any objection and accepted the same. The weightage to be given to the statements made by Mr. Bhik Narayan during the cross examination, will be considered by the trial judge in the context of total fact and evidence. The authority letter dated 18<sup>th</sup> July, 2011 given by Respondent No.3 to Mr. Bhik Narayan is not shown to have been not known to the Respondents prior to the passing of the earlier order dated 15<sup>th</sup> March, 2012. Therefore, I am of the view that the impugned order also for no interference as in the present facts the Petitioner himself had accepted the order passed on 15<sup>th</sup> March, 2012 allowed Respondent

No.3 to examine herself after Mr.Bhik Narayan is examined. The Petitioner now seeks to challenge the order dated 15<sup>th</sup> March, 2012 indirectly, which if he was to do directly would now be hopelessly time barred. This is an attempt on the part of Petitioner to do indirectly what cannot be done directly.

6. Therefore, in the facts and circumstances of the case there is no reason for me to exercise my supervisory jurisdiction under Article 227 of the Constitution of India to interfere with the view taken by the City Civil Court. Hence, the petition is dismissed. No order as to costs.

**[M. S. SANKLECHA, J.]**