

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

**CIVIL APPLICATION NO. 2529 OF 2017
IN
WRIT PETITION NO. 7342 OF 2017**

Bipin Jaysukhlal Mehta & Ors.

...Applicants

Versus

Kantilal Chunilal Shah
(deleted since deceased)

Rajendra Govindji Khona
(deleted since Suit dismissed)

Jayantibhai Talakchand Shah & Anr.

...Respondents

.....

Mr.V.Y.Sanglikar a/w. Mr.P.J.Ramchandani and Mr.R.R.Shah i/b.
Mr.H.M.Advani for the Applicants.
Mr.Rajesh B. Jain a/w. Ms.Ameya Mahajan and Ms. Ankita Sovani
i/b. Legal Juris for Respondent No.1.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 07, 2017**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Civil Application is moved by the applicants/petitioners for modification of order dated 3rd July 2017 passed by this Court.

3. By order dated 3rd July 2017, this Court has directed the learned Judge of the City Civil Court to take up the Suit and all the applications and hear them on a day-to-day basis, subject to its convenience and also directed the defendants to lead evidence and parties shall cooperate with the Court.

4. Learned counsel for the applicants/petitioners has produced the copies of the Roznama of the trial Court before this Court and submitted that the learned Judge of the trial Court has taken the order in a liberal sense. He has pointed out in Roznama dated 6th November 2017 when the Court has expressed that this Court is going to adjourn the matter on day-to-day basis as there is likelihood of contempt. He has further submitted that the trial Court is keeping the matter on day-to-day basis and, therefore, it has caused great inconvenience to the lawyers and parties. He has further submitted that the learned Judge has kept the matter when it is not feasible for him and due to under control, the matter and interim applications should be disposed of.

5. Learned counsel for respondent no.1/original plaintiff has submitted that the evidence of the plaintiff had already over in the year 2009 and the additional evidence was recorded in the year 2016 and since then, the evidence of the defendants i.e. the petitioners is awaited. He has further submitted that in July 2001 the defendants had given a list of 102 witnesses in this matter.

6. Perused the Roznama. I am shocked to see the Roznama and also after hearing the submissions that from July 2017, the learned Judge of the City Civil Court has not examined a single witness of the defendants till today. It is nothing but a mockery of the order passed by this Court. Keeping the matter on day-to-day basis and not proceeding further by recording the evidence is an eye wash and self deception by the learned Judge of the City Civil Court. It is not expected from him. It is specifically mentioned in the order that the Suit is pending since 1998. When the evidence of the plaintiff was over, it is the duty of the trial Court to proceed with the evidence of the defendants. I am aware that there may be many applications filed by either of the parties during pendency of this trial. However, those applications can be decided in between

and some can be decided at the stage of the judgment. Filing of applications can be tactics to protract the trial. The learned Judge shall record the evidence of the witnesses and shall not allow the recording of the evidence of witnesses are repeated on same issue again and again. The Learned Judge shall only consider the requirements of the corroboration and only to that extent, the witnesses can be allowed. It is to be noted that since 19 years, the Suit is pending and it is part heard since last 16 years. It is the trial Court to control and not to allow the counsel or the parties to control the trial. The learned Judge shall record the evidence on day-to-day basis either in the first sitting or in the second sitting and accordingly arrange its own board. It is made clear that the trial Court may not take the matter one day in a week which is convenient to him /her.

7. The Principal Judge, City Civil & Sessions Court, Mumbai, to take note of this order.

8. Registrar (Judicial) to send the copy of the order to the Principal District and Sessions Judge, City Civil Court, Mumbai, on or before 8th November 2017.

9. Parties to appear before the trial Court on 10th November 2017 at 3.00 p.m. and the defendants are directed to get one witness present.

10. In view of the above, Civil Application is disposed of.

(MRIDULA BHATKAR, J.)