

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 668 OF 2017

Mrs. Bunny Dara Daruwala

...Petitioner

Versus

Dr. Anjali Balasaheb Halgekar

...Respondent

Mr. Dakshesh Vyas, i/b Mr. Yagnesh Vyas and Mr. Nishant Vyas,
for the Petitioner.

Mr. N.P. Wagle, for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 8 February 2017

ORAL ORDER :

1. By this Petition, the Petitioner has challenged the order passed by the Appellate Bench of the Small Causes Court, Mumbai dated 17 September 2016 in Revision Application No. 168 of 2016 allowing the Revision and setting aside the order passed by the learned Small Causes Court, Judge below **Exh.33** in R.A.E. Suit No. 724/1078 of 2010. An Application below **Exh.33** was moved by the Petitioner to strike off certain

portions in examination-in-chief of the witness of the Respondent-Plaintiff. The learned Small Causes Court, Judge came to the conclusion that the certain paragraphs in the examination-in-chief are not relevant and they are beyond the pleadings. This order has been reversed by the Appellate Bench holding that it was not the stage to go into the merits of the averments and has further directed the Petitioner to cross-examine the witness in respect of these averments.

2. Considering the scope of Article 227 of the Constitution of India, I am not inclined to interfere in these purely interlocutory orders. All that the Appellate Bench of the Small Causes Court has done is to restore the recitals in the examination-in-chief of the witness which were struck off by the learned Small Causes Court, Judge. The arguments of the Petitioner that the recitals should not be taken into consideration for reasons such as beyond the pleadings or irrelevant, etc. can always be urged at the time of trial. It is also open to the Respondent-Plaintiff to rely upon the same and it is for the learned Small Causes Court, Judge to adjudicate the dispute accordingly. As far as directions to the Petitioner to cross-examine the PW.2 in respect of the portion in the examination-in-chief which stands restored, it is the choice of the Petitioner to examine the said witness. Now the portions have been restored, it is the decision of the Petitioner whether he wants to cross-examine the witness in spite of these

averments and whatever consequences that was ensured from the failure to cross-examine. If the Petitioner chose to cross-examine the said witness, then the liberty has already provided in the impugned order.

3. By keeping the contentions of parties on merits of the Suit open, the Writ Petition is disposed of.

4. Needless to state that the orders impugned being interlocutory, the Suit will be decided on its own merits.

[N.M. JAMDAR, J.]