

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4396 OF 2018

**KHUSRAV SAROSH TARAPOREWALA AND ANOTHER
VS.**

**DINYAR FARDOONJI BHAGAT
THROUGH LRS. GOOL DINYAR BHAGAT**

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Advocate for the Petitioners : Shri S. V. Natu
Advocate for Respondent Nos.1/1 to 1/3 and 3 :
Shri P.V. Mandlik Sr.Advocate h/f. Shri P.P. Mandlik
AGP for Respondent No.5: Shri S.K.Tambe

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 13th JUNE, 2018.**

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1. The issue is that the application Exhibit 118 filed by respondent No. 1 in M.A.No. 17/2013, praying for issuance of summons to examine respondent No. 2 as his witness, has been rejected.

2. After hearing this matter for quite some time, the learned Senior Advocate appearing on behalf of the contesting respondent No.1/1 to 1/3, respondent No.3 and respondent No.2 represented by respondent No.1/3, submits that the original respondent No. 2 Bejan Homi Bharucha may be examined by the Commissioner appointed by the Trial Court.

3. Learned advocate for the petitioners submits that this petition can, therefore, be partly allowed by setting aside the impugned order and by directing the Trial Court to appoint the commissioner for causing the examination and cross-examination of the original respondent No.2 Bejan Homi Bharucha.

4. Considering the above statement made on instructions, this petition is partly allowed. The impugned order dated 31/03/2018 is set aside and application Exhibit 118 is partly allowed. The Trial Court would now appoint the Commissioner, preferably a Senior Advocate practicing in the Court at Jalna, for conducting the examination and cross-examination of the original respondent No. 2 Bejan Homi Bharucha. Necessary directions in this context would be issued and further directions may be issued for carrying out the recording of evidence of the said original respondent No.2.

5. It is expected that the commissioner would complete the exercise of examining the Bejan Homi Bharucha

expeditiously and preferably within a period of six weeks from the date of appointment of the commissioner.

6. The petitioners in this petition would bear the entire expenses of the commission.

7. The Trial Court would endeavour to decide M.A. No.17/2013 as expeditiously as possible and preferably on or before 31/12/2018, if the time granted earlier by this Court by order dated 04/08/2017 in Writ Petition 8297/2017 has not been already extended.

(RAVINDRA V. GHUGE, J.)

shp/-