

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

WRIT PETITION (ST.) NO.5912 OF 2018

M/s.Hickson and Dadajee Pvt. Ltd. .. Petitioner
Vs.
The New India Assurance Co. Ltd. & Anr. .. Respondents

Mr.A.S. Khandeparkar i/by Ms.Radhika Warerkar for the petitioner.
Mr.V.Y. Sangaliker for the respondents.

CORAM : R.D. DHANUKA, J.
DATE : 6th March 2018

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 24th January 2018 passed by the Estate Officer rejecting the application filed by the petitioner for dismissing the Case Nos.0014 and 0014A of 2003 on the ground of want of cause of action. In the application filed before the Estate Officer, the petitioner has placed reliance on the judgment of the Supreme Court in the case of **Suhas H. Pophale (Dr.) Vs. Oriental Insurance Co. Ltd. and its Estate Officer, 2014 (3) All M.R. 894** and also the judgment of the Division Bench of this Court in the case of **Preeti Bhatt (Dr.) Vs. Central Bank of India, 2017 DGLS (Bom.) 439.**

2. A perusal of the record clearly indicates that the evidence of the petitioner is already closed. The respondent no.1 has filed affidavit of evidence. The petitioner has to cross-examine the witness proposed to be examined by the respondent no.1 before the learned Estate Officer. In the impugned order dated 24th January 2018, the learned Estate Officer

has directed the petitioner to inform whether the petitioner wants to cross-examine the witness of the respondent no.1. In view of the fact that the evidence of the petitioner is already closed and affidavit of evidence is already filed by the respondent no.1, in my view, in these circumstances, the learned Estate Officer was justified in rejecting the application filed by the petitioner for dismissing the case for want of cause of action at this stage

3. All contentions raised by the respondent no.1 are kept open and can be adjudicated by the learned Estate Officer on its own merits. It is made clear that the observations made by the Estate Officer in the impugned order dated 24th January 2018 are prima facie. The learned Estate Officer shall decide all the contentions raised by the parties in this petition at the stage of hearing of Case Nos.0014 and 0014A of 2003 on its own merits without being influenced by the prima facie observations made in the impugned order dated 24th January 2018. The petitioner is directed to commence the cross-examination of the witness proposed to be examined by the respondent no.1 before the learned Estate Officer. Learned Estate Officer shall decide the case expeditiously and not later than six months from the date of next hearing.

4. Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.