

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 339 OF 2017
WITH
CIVIL APPLICATION NO. 435 OF 2017
IN
APPEAL FROM ORDER NO. 339 OF 2017

Paramjeet Singh H. Ajimal & Anr.	...Appellants
Vs.	
Mr. Chitnan Arun Zaveri	...Respondent

Mr.Harbhajan Singh B. Ajimal, Appellant-in-person present in Court.

CORAM: DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH SEPTEMBER, 2018.

P.C.:

1. This appeal is directed against the Order dated 05.01.2017 passed by the City Civil Court, Mumbai, thereby rejecting the Notice of Motion No. 2745/2014 filed in S.C.Suit No. 226 of 2014.
2. The said Notice of Motion was taken out by the appellant herein seeking permission to represent the plaintiffs in the said suit in his personal capacity, as Constituted Attorney of the plaintiffs. The Trial Court has however rejected the said Notice of Motion, holding that the suit is filed for specific performance of agreement which would involve the question of facts and law; the appellant has not given the details of any legal background so as to address the Court on the question of law if the same arises during the course of proceedings. Hence, it was held that for smooth

functioning of the Court and for effective adjudication of the matter, the appellant cannot be permitted to argue the matter in person.

3. While challenging this order of the Trial Court, the appellant has in his appeal memo itself given the details of about 24 proceedings, in which he has appeared in person in this Court. He has submitted that he has also appeared in person in Small Causes Court and in various matters in City Civil Court. Though the opposite side in these matters was represented by the advocate, he had succeeded in majority of the matters, and therefore, it is submitted by him that he can render able assistance to the Court for effective adjudication of the matter. According to him, the Trial Court had not even enquired with him or asked him as to whether he can render such legal assistance and whether he has any experience in legal matters. Without ascertaining these facts, the Trial Court has passed the impugned order rejecting him the permission to conduct the suit in person according to his needs to be set aside.

4. In the present appeal also the appellant has appeared in person and hence, the matter was referred to the Committee constituted under the provisions of Chapter IV-A of Bombay High Court Appellate Side Rules. The report of Committee goes to show that the appellant was called for interaction; the appellant had appeared before the Committee for interaction and the Committee found on the basis of the said interaction

that the appellant would be in a position to assist this Court effectively in disposal of the present matter.

5. In view thereof, it has to be held that though the appellant is not having law degree, he can assist the Court in the effective adjudication of the dispute.

6. As to the question whether a Constituted Attorney of the Party can be permitted to conduct the proceedings in person, the appellant has relied upon the judgment of this Court in *Bhiwa Yeshwant Vs. Regional Director, E.S.I. Corp. And others*, 1978 Mh.L.J 589, wherein the similar issue was raised for consideration and it was held that....

“Settled position, therefore, is that one who is not an Advocate cannot assert appearance in Court as a matter of right and claim a right of audience accordingly. Such right must be held to be confined to the litigant himself and/or to his Advocate. To hold otherwise would mean that persons other than Advocates are also allowed to practice. This is not to lay down that there is a blanket bar or an absolute edict against such appearance. But such appearance can only be after and if leave in that behalf is granted by the Court, such grant being a matter entirely for the Court to consider and decide on the facts and circumstances of each case and subject to such conditions as the Court may deem just and proper. This position is also, to an extent, supported by [section 32](#) of the Advocates, Act 1961, vide :

"Notwithstanding anything contained in this Chapter, any Court, authority or person may permit any person, not enrolled as an Advocate under this Act, to appear before it or him in any particular case."

7. It was further held that such motion seeking permission needs to be made by the party and not by the Constituted Attorney. Here in this case,

it is the plaintiffs of the suit, who are the litigants had filed this Notice of Motion before the Trial Court, which is produced at Page No.59 of this appeal, in which they have sought the permission of the Trial Court to allow the appellant to appear on their behalf. They have categorically stated in Para 4 of the said Notice of Motion that appellant is their Attorney and according to them he is the only person whom they consider competent and capable to protect their rights and interests involved in the suit. They have further stated that he knows the facts of the matter before the Court, starting from the stage of negotiation etc. and he is the only person to best put forward their case before the Court and they do not want to engage any advocate for this purpose.

8. In view of this specific motion filed by the plaintiffs in the said suit and in the light of the law laid down by this Court in the above said judgment *Bhiwa Yeshwant Vs. Regional Director, E.S.I.Corp. And Others, 1978 Mh.L.J.58*, the Trial Court should have granted their Notice of Motion may be by placing certain terms and conditions, but without considering whether appellant can be in a position to render able assistance to the Court for effective adjudication of the suit, the Trial Court should not have been rejected the said Notice of Motion.

9. In view thereof, the impugned order passed by the Trial Court is set aside.

10. The Notice of Motion filed by the appellant before the Trial Court is allowed.
11. The Trial Court to allow the appellant to appear in person in the suit as Constituted Attorney of the plaintiffs.
12. Appeal is disposed of in above terms.
13. The pending Civil Application in Appeal from Order is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]