

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) No. 19382 OF 2018

Shakti Printing & Dyeing Works ... Petitioner
Vs.
Brihanmumbai Mahanagarपालिका & Ors. ... Respondents

Mr. Deepak Chitnis i/b. M/s. Deepak Chitnis-Chiparikar & Co.,
Advocate for the petitioner.
Mr. Pradeep M. Patil, Advocate for respondent nos. 1 to 3/BMC.
Ms. Gargi Bhagwat i/b. M/s. Divekar Bhagwat & Co., Advocate for
respondent no. 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **13th July, 2018.**

P.C.:

In this Writ Petition, the order dated 3rd February, 2018 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi in Notice of Motion No. 3644 of 2017 thereby dismissing the said Notice of Motion of requesting the Court to appoint Court Commissioner for recording the evidence of cross-examination of P.W-1 Anupnarain Hariram Kapoor is challenged.

2. The learned counsel for the petitioner submitted that the learned Judge ought to have considered physical condition and old age of the PW-1. He submitted that PW-1 is 77 years old and is suffering from spinal problem.

3. The learned counsel for the respondent no. 4 submitted that in 2013, the PW-1 has submitted his affidavit-in-chief and since then he is avoiding to come for cross-examination.

4. Perused the impugned order. Also perused the certificate dated 12th July, 2018 issued by Dr. B.M. Majumdar, Physician and Surgeon wherein he has mentioned that it is a case of lumbosacral joint pain since January 2018 and it is age related degenerated disease affecting spine. He is unable to stand and sit for a long time. In view of certificate and considering the age of PW-1, the order of the trial Court is hereby set aside.

5. The trial Court is requested to appoint retired Judge of City Civil Court or Small Causes Court or Family Court, to work as Court Commissioner and fix the fees of sufficient amount of the Court Commissioner. As per the convenience, on the date given by the Court Commissioner, both the counsel for the petitioner/plaintiff and respondents including the counsel for the Corporation to remain present and cross-examine PW-1. The PW-1 shall cooperate the Court Commissioner and the counsel. The fees of the Court

Commissioner is to be paid by the plaintiff. The cross-examination is to be completed on or before 15th August, 2018. The plaintiff/petitioner to make all the arrangements of the staff of the Court Commissioner, when evidence is recorded at the residence of PW-1. Parties to appear before the trial Court on 18th July, 2018.

6. Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)