

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.19 OF 2018

Mohammed Arif Haji Ismail Noorsumar	 Applicant
V/s.	
Afak Anwar Mandaviya & Ors.	 Respondents

Mr. Yadavendra R. Dube for the Applicant.

Mr. Datta Mane, a/w. Mr. Naveen Kumar and Mr. N.P. Bhavsar, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 6TH FEBRUARY 2018.

P.C. :

1. Heard Mr. Dube, learned counsel for the Applicant, and Mr. Mane, learned counsel for the Respondents.

2. By this Revision Application, filed under Section 115 of the Code of Civil Procedure, 1908, the Applicant has challenged the order dated 19th August 2017 passed by the City Civil Court, Dindoshi, Mumbai, thereby rejecting the Notice of Motion No.1701 of 2017 in S.C. Suit No.2080 of 2011.

3. The said Notice of Motion was filed by the present Applicant to recall the order dated 23rd March 2017. The order dated 23rd March 2017 was passed by the Trial Court for recording further cross-

examination of PW-1-Original Plaintiff, i.e. the Applicant herein, through the 'Court Commissioner'. The said order came to be passed, as can be seen from the noting made in the 'Roznama', as the witness did not understand the questions put to him in English and in Hindi language and hence, the request was made to conduct further cross-examination of PW-1, i.e. the Applicant herein, in Urdu language. Therefore, the Trial Court thought it fit to appoint the 'Court Commissioner' to record further cross-examination of PW-1, i.e. the Applicant herein, in Urdu language, in which the witness was comfortable. Accordingly, the Trial Court has passed the order on 23rd March 2017.

4. The only grievance raised by learned counsel for the Applicant is that, the cost of the 'Court Commissioner', to be appointed to record further cross-examination, should not be saddled on the Applicant. Learned counsel for the Respondents fairly concedes that, both the parties may be directed to bear the cost of the 'Court Commissioner' equally and in view thereof, the recording of further cross-examination of PW-1 by the 'Court Commissioner' be also made time bound.

5. Learned counsel for the Applicant further submits that, as the Applicant (PW-1) is comfortable in Hindi language and not in Urdu language, the 'Court Commissioner' be directed to record further cross-examination of PW-1 in Hindi language.

6. The Revision Application is allowed.
7. The cost of the 'Court Commissioner', to be appointed to record further cross-examination of PW-1, i.e. the Applicant herein, be borne by the Applicant and Respondents equally.
8. The Trial Court to appoint the 'Court Commissioner' within a period of two weeks from the date of receipt of a copy of this order and, thereafter, within further two weeks, the 'Court Commissioner' to complete further cross-examination of PW-1 and submit the report.
9. Revision Application is disposed with the above directions.

[DR. SHALINI PHANSALKAR-JOSHI, J.]