

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12808 OF 2018

Prakash Devji More

... Petitioner

v/s

Komal Jamsandekar and others

... Respondents

Mr R.K. Mendadkar with Mr C.K. Bhangoji for Petitioner.

Ms Bhavana Punalekar I/b Mr Nitin P. Dalvi for Respondents.

CORAM : B.P. COLABAWALLA J.

DATE : 24th NOVEMBER, 2018.

P.C. :-

1. Rule. Respondents waive service. By consent of parties, rule is made returnable forthwith and heard finally.

2. This Writ Petition challenges the order dated 5th October 2018 passed by the Trial Court. By this order, the evidence affidavit of witness – Respondent No.1 was discarded from record in view of the fact that neither Respondent No.1 nor his Advocate were present on the date when the matter was called out. In fact, the matter was kept back by the Trial Court and despite this, neither Respondent No.1 nor his Advocate were present so as to enable the Petitioner to cross-examine Respondent No.1. In these circumstances, the

evidence affidavit was discarded.

3. I am informed that the next date before the Trial Court is on 27th November 2018. Mr Mendadkar, learned counsel appearing on behalf of the Petitioner (Respondent No.1 before the Trial Court) has undertaken that his client shall remain present before the Trial Court on the said date and the Petitioner can cross-examine Respondent No.1 on the said date.

4. Considering this statement, in these peculiar facts and circumstances, I set aside the impugned order dated 5th October 2018 subject to the condition that the Petitioner herein (Respondent No.1 before the Trial Court) shall pay costs of Rs.5,000/-, which shall be deposited with Kirtikar Law Library, A.S., High Court, Bombay within a period of one week from today and file a receipt of the same on the record of this Writ Petition. It is made clear that the Respondent No.1 shall remain present before the Trial Court on 27th November 2018 so as to enable the Petitioner to cross-examine him. If for any reason whatsoever the Respondent No.1 does not remain present before the Trial Court on 27th November 2018, this Writ Petition shall automatically stand dismissed and the impugned order shall continue to operate.

5. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(B.P. COLABAWALLA J.)