

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13427 OF 2018

Ramal Advani

..Petitioner

Vs.

Vashulal M. Talreja (since deceased)
& ors.

..Respondents

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Aloukik R. Pai a/w. Siddhant Joshi I/b. N.N. Thakkar for the
petitioner.

Amar Talreja for respondent Nos.(1a), (1b), (1c).

Balraj Kulkarni I/b. PRS Legal for the respondent No.2.

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CORAM : M.S.KARNIK, J.

DATE : 13th DECEMBER, 2018.

P.C. :

Heard learned Counsel for the petitioner and learned
Counsel for the respondents at some length.

2. The orders impugned are mentioned in the prayer
clauses. It is the contention of the learned Counsel for the
petitioner that summons has been issued by the Court to the
witness Shri Narendra Nair. Learned Counsel submits that
despite every efforts being made to serve the summons, the said

witness Shri Narendra Nair is intentionally avoiding the service. The petitioner had filed the applications before the trial Court for various reliefs seeking enforcement of his appearance. The said applications have been rejected. Order 16, Rule 10(2) of Code of Civil Procedure also deals with a situation where witness is intentionally avoiding service of summons.

3. In my opinion, if a fresh application is made by the petitioner before the trial Court that the witness Shri Narendra Nair is intentionally avoiding service and seek further reliefs in accordance with Order 16 Rule 10(2) and (3) of the Code of Civil Procedure, the learned Judge may consider the said application on its own merits without being influenced by any observations made in the orders impugned in this Petition. In this view of the matter, the following order is passed.

ORDER

(a) The petitioner to make an appropriate application with material averments indicating that the witness Shri Narendra Nair is intentionally avoiding service, on or before the next date fixed by

trial Court i.e. 20th December, 2018. If such an application is made, the Trial Judge to consider the same on its own merits without being influenced by any observations made in the impugned orders.

(b) The said application may be decided as expeditiously as possible and in any case by 11th January, 2019.

(c) In view of the time-line fixed, learned Counsel for the petitioner assures that he will give an advance copy of the application to the learned Counsel for the respondents so as to enable the respondents to file response on 20th December, 2018 itself or within extended time as may be granted by the Trial Court.

4. In this view of the matter, the Petition is not pressed any further by the learned Counsel for the petitioner. The Petition is disposed of.

(M.S.KARNIK, J.)