

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5 OF 2018**

Hetero International

...Petitioner

Vs.

IDBI Bank Limited & Ors.

... Respondents

.....

Sowmya Shrikrishna a/w Piyush Pande I/ Kartikeya & Associates for the Petitioner.

Mr. Ashok Rizvi I/b AKS Legal Consultant for the Respondent No.1.

Mr. Sanket Murgle a/w Dharmesh Jani I/b Anil T. Agrawal for the Respondent No.2.

.....

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 7, 2018.

P.C. :

1. Not on board. Taken on board on a praecipe as moved on behalf of the petitioner.

2. Heard learned counsel for the parties. The limited challenge as raised in the petition is to the order dated 23.11.2017, passed by the learned trial judge which concerns the recording of evidence of a witness of respondent no.2, who is residing in the U.S. The relevant extract of the impugned order as passed by the learned trial judge reads as under:-

“Matter is time bound by Honourable High Court to be decided upto 14.12.2017. It is apparent that it will take time for all formalities for evidence to be recorded on commission or what is being said by LC for plaintiff can be looked into by the Court, if the evidence is recording by V.C. in presence by the Presiding Officer. Therefore, the evidence is directed to be recorded on V.C. in Court.”

3. Learned counsel for the petitioner contends that as the evidence

of the witness would be recorded by video conferencing the impugned order ought to have taken into consideration the guidelines which are issued by the Delhi High Court, annexed at Exhibit B to the petition. It is submitted that the observations which are made by the Supreme Court in the decision in *State of Maharashtra Vs. Dr. Prafull B. Desai*¹, are relevant in this context so that the evidence is fair and acceptable in law.

4. A perusal of the impugned order shows that the contention of the petitioner to consider the effect of the guidelines as issued by the Delhi High Court is not taken into consideration, the court being concerned with the time limit to decide the suit. The contention as urged on behalf of the petitioner is that the observance of these guidelines is imperative and directly concerns with the evidence to be recorded in a fair manner.

5. Considering the nature of the order, in my opinion, it would be appropriate that the learned trial judge considers the precautions if any to be taken following the guidelines issued by the Delhi High Court, in undertaking examination of the concerned witness by video conferencing.

6. Accordingly the impugned order dated 23.11.2017 is set aside to the extent as noted above. The learned trial judge shall re-consider the

1 2003 (4) SCC 601

petitioner's application on the issue of video conferencing. The parties are directed to approach the learned trial judge at 11.00 am on 12th February 2018, with a copy of this order to enable the court to hear the parties on all the concerns in regard to the examination of witness on video conferencing.

7. Needless to observe that the learned trial judge would take into consideration all the necessary and proper precaution so that the evidence of the witness to be recorded is in accordance with law and of a acceptable judicial standard and that such evidence is not defeated on any technical grounds. Petition is accordingly disposed of on the above observations. No costs.

8. It is stated that there is another witness who is also not available in the country. The learned trial judge shall follow the same procedure for recording the evidence of both the witnesses.

9. All contentions of the parties on merits of the matter are expressly kept open.

10. At this stage, learned counsel for the respondent no.1 states that the respondent no.1 is not necessary party in the proceedings before the trial court. If that be the case, then the respondent no.1 can make necessary application before the learned trial judge.

(G.S. KULKARNI, J.)