

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE JURISDICTION**

**WRIT PETITION [STAMP] NO.3505 OF 2019**

|                              |   |             |
|------------------------------|---|-------------|
| Dahiben Dayalal Rawal        | ] | Petitioner  |
| Vs.                          |   |             |
| Pandurang Sitaram Khanolkar  | ] |             |
| (deceased) through his Legal | ] |             |
| Representatives;             |   |             |
| a)Malini Pandurang Khanolkar | ] |             |
| and others.                  | ] | Respondents |

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Mr. Onkar Gupte i/b Ms.Ramina S. Ghisulal, Advocate for Petitioner.  
Mr. S.R. Jaiswal, for Respondent No.1D.

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**CORAM : R.G. KETKAR, J.**  
**DATE : 27TH FEBRUARY, 2019.**

**P.C.**

Not on board. At the request of Mr. Jaiswal, taken up in the production board.

2. Heard Mr. Gupte, learned Counsel for the petitioner and Mr. Jaiswal, learned Counsel for the respondent at length.

3. This Petition takes exception to the order dated 9<sup>th</sup> January, 2019 passed by the learned Judge, Court Room No.12 of the Court of Small Causes at Mumbai below Exhibit 1 in R.A.E. & R Suit No.640/1096 of 2001. By that order, the learned trial Judge closed the evidence of the defendants and discharged D.W.3-Phiroze.

4. Rule. Mr. Jaiswal waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the

Petition is taken up for final hearing.

5. The matter was heard on 11<sup>th</sup> February,. 2019. In paragraph 6 of the order dated 11<sup>th</sup> February, 2019, statements made by Mr. Gupte were recorded. Paragraph 6 reads thus;

“Mr. Gupte submitted that since the witness was called by the Court for putting some questions, presence of defendant's Advocate was not necessary and the Court could have posed questions to DW-3. He states that the Advocate for defendant No.1 will assist the Court when the Court is posing questions to DW-3 and will not pose any question to said witness. Statement made by Mr. Gupte is recorded.

6. Mr. Jaiswal has no objection to allow the Petition in terms of prayer clauses (a) and (b). However, he expressed apprehension that under the guise of assisting the Court, Advocate for defendant No.1 will suggest questions to the Court for posing them to D.W.3. This apprehension can be taken care of by permitting Advocate for respondents No.1(a) to 1(e) to raise objections if such attempt is made by the Advocate for defendant No.1.

7. In view of categorical statement of learned Counsel for defendant No.1 that he will not pose any question to D.W.3, the learned trial Judge will deal with this in the light of the order dated 11<sup>th</sup> February, 2019.

8. In view thereof, Rule is made absolute in terms of prayer clauses (a) and (b). The learned trial Judge will take care of apprehension expressed by Mr. Jaiswal that learned Advocate for defendant No.1 will not pose any question to D.W.3 under the guise of assisting the Court. Stay stands vacated.

**[R.G. KETKAR, J.]**