

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6488 OF 2019

Olga D'souza,
through her Constituted Attorney
Mrs. Jeanne Maria D'Silva

...Petitioner

Versus

Maria Matutina D'souza
And others

...Respondents

....

Mr. Sunny Shah a/w. Ms. Roshi Bhandary i/b. Bhandary & Bhandary,
Advocate for the Petitioner.

Mr. Monil Punjabi, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 04th JULY, 2019

P.C.

1. Not on board. At the request of Mr. Shah taken up for admission.
2. Heard Mr. Sunny Shah, learned counsel for the petitioner and Mr. Monil Punjabi, learned counsel for the respondents, at length.
3. This Petition takes exception to the orders dated (i) 20.6.2018, (ii) 19.9.2018, (iii) 25.10.2018 below Exhibit-58 and (iv) 19.3.2019 passed by the learned trial Judge in R.A.E. Suit No.473/699 of 2011. By order dated 20.6.2018, the learned trial Judge adjourned the matter to 16.7.2018 for filing affidavit of evidence of the defendant. By order dated 19.9.2018, the learned trial Judge closed the evidence of

the defendant as the defendant and her advocate was absent. By order dated 25.10.2018 below Exhibit-58, the learned trial Judge rejected the application made by the defendant for setting aside evidence closure order dated 19.9.2018. By order dated 19.3.2019, the learned trial Judge rejected the application Exhibit-64 on the ground that the prayer made for setting aside the order dated 19.9.2018 was already rejected and present application in substance is seeking review.

4. Rule. Mr. Punjabi waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing

5. The petition was heard on earlier date and in view of what transpired in the Court, the petitioner has tendered a copy of the affidavit of evidence in lieu of examination-in-chief of the defendant dated 12.6.2019. Said affidavit is solemnly declared before Vice Consul. (Cons), Consulate General of India, Perth.

6. Mr. Shah assures that the petitioner will file affidavit of evidence and compilation of documents in the trial Court on 8.7.2019. The exercise of marking of documents may be completed between 8.7.2019 and 11.7.2019. He further states that the petitioner's witness will make herself available for cross-examination between 12.7.2019

and 27.7.2019.

7. Mr. Punjabi assures that without any undue adjournment and delay, the cross-examination of the petitioner's witness will be completed between 12.7.2019 and 27.7.2019. The statement made on behalf of the petitioner dated 4.7.2019 signed by their Advocate is taken on record and marked 'X' for identification.

8. In view thereof, the impugned orders are set aside. The petitioner shall file affidavit of evidence and compilation of documents in the trial Court on 8.7.2019. The marking of documents shall be completed between 8.7.2019 and 11.7.2019. The respondent's Advocate will complete the cross-examination of the petitioner's witness between 12.7.2019 and 27.7.2019. It is made clear that if the petitioner does not file affidavit of evidence and compilation of documents on 8.7.2019 and further does not make herself available for cross-examination between 12.7.2019 and 27.7.2019, the impugned orders shall stand revived and her evidence shall stand discarded without further reference to the Court.

9. Rule is made absolute in aforesaid terms with no order as to costs.. Petition is disposed of. Order accordingly.

(R. G. KETKAR, J.)