

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2806 OF 2019

Devendra Yashwant Manchekar ...Petitioner
vs.
Suryakant Vishnu Joglekar and Ors. ...Respondents

Mr. Rohit Joshi, for the Petitioner
None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : MARCH 13, 2019

P.C.:

- . Heard Mr. Joshi, learned counsel for the Petitioner.
2. The challenge in this Petition is to the order dated 21st July, 2018 by which the learned trial Judge has dismissed the Petitioner's Application at Exhibit 109 seeking direction to the Court Commissioner to record the examination in chief of the original Plaintiff orally, instead of by way of affidavit in lieu of examination in chief.
3. Learned counsel for the Petitioner submits that from several orders passed in this matter and from the perusal of the orders, it is clear that original Plaintiff is not at all audible and clear in his speech. He submits that severe prejudice is being caused to the Defendant as the original Plaintiff is not in a position to give clear

answers. For all these reasons Mr. Joshi submits that Application (Exhibit 109) was required to be allowed.

4. Upon due consideration of the aforesaid submissions and from the perusal of the record, I am satisfied that the learned trial Judge has and correctly dismissed the Application (Exhibit 109) filed by the Petitioner. Even if it is assumed and not accepted that the Plaintiff is not very audible and clear that by itself can hardly be a reason to require such a Plaintiff to orally depose by way of examination in chief. If as urged by the Petitioner, the original Plaintiff is not audible or clear during cross examination, then surely it is not expected that the Plaintiff will be clear and audible in the course of record of examination in chief. It appears that the application (Exhibit 109) was made only to delay and protract the proceeding. Therefore, the same was in fact required to be dismissed with cost.

5. Accordingly, there is no error in the impugned order. This Petition is liable to be dismissed and is hereby dismissed.

6. There shall however no order as to cost on this occasion.

(M. S. SONAK, J.)