

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13486 OF 2017

1. Babgonda Malgonda Patil)
Age : 62, Occu. Business,)
R/o. Kagal, Tal. Kagal,)
Dist. Kolhapur.)
2. Shobha Babgaonda Patil)
Age: 56, Occu. Household,)
R/o. Kagal, Tal. Kagal,)
Dist. Kolhapur.)
3. Sumitra @ Sumidha Babgonda Patil)
Age: 55, Occu. Household,)
R/o. Ratnoday HSG Society,)
Block No. 2, Nagala Park, Kolhapur)..Petitioners

V/s.

1. RBL Bank Ltd. (Formerly known)
as The Ratnakar Bank Ltd.))
Registered Office at Vyapari Peth,)
Shahupuri, Kolhapur,)
Br. - Market-yard, Kolhapur.)
2. Vishwas Kalyanrao Chachadi)
Age: 57, Occu.: Service,)
R/o. CSN. 50, 483/25,)
Block No. 2, Nagala Park,)
Kolhapur.)..Respondents

Mr. Dhairyasheel Sutar, Advocate for the Petitioners.
M/s. Gargi Bhagwat I/b. Divekar Bhagwat & Co., for the
Respondent No. 1

CORAM : N.J. JAMADAR, J.
DATED : 16th July, 2019.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.

2. The challenge in this Petition is to the order passed by learned 3rd Joint Civil Judge, Senior Division, Kolhapur on 05.08.2017 on an application under Order 18 Rule 3-A of the Code of Civil Procedure, whereby, the learned Judge was persuaded to permit Respondent No. 1 – Plaintiff Bank to examine Mr. Amar Sharad Patil as its witness.

3. A bare perusal of the impugned order, reveals that the learned Civil Judge has not taken into account the fact that by an order dated 23.01.2017, his predecessor had allowed the application preferred by the Defendant – Petitioner herein and

directed that the affidavit of examination-in-chief of the very same witness Shri. Amar Sharad Patil shall not be accepted for the reason that his examination was in breach of the provisions contained in Order 18 Rule 3(A) of the Code.

4. The learned Counsel for the Respondent submitted that the very passing of the Order dated 23.01.2017, whereby the court declined to accept the Affidavit of examination-in-chief of Shri. Amar Sharad Patil, was the reason for the Plaintiff to submit the Application (Exhibit 52) with justifiable explanation as to why Shri. Amar Sharad Patil was not examined, before the Plaintiff's witness, who has already been examined. Therefore, the mere fact that the impugned order does not refer to the earlier order dated 23.01.2017 cannot be a ground to interfere with the impugned order in exercise of the extraordinary jurisdiction.

5. It is imperative to note that while passing the order dated 23.01.2017 the Civil Court had adverted to the provisions contained in Order 18 Rule 3(A) and the failure of the Plaintiff

to make out a satisfactory case for permitting it to examine Mr. Amar Patil, and, therefore, the Affidavit of examination-in-chief was not taken on record. In the circumstances, while again permitting the Plaintiff to examine Mr. Amar Patil as a witness, the learned Civil Judge ought to have taken into account the consequences which flow from the passing of the earlier order. This court does not mean to hold that the learned Civil Judge could not have permitted the Plaintiff to examine Mr. Amar Patil, under any circumstances. But the learned Civil Judge ought to have considered the factum of passing of earlier order on the application (Exhibit 49) preferred by the Petitioner – Defendant, and its consequences upon the prayer made by the Respondent – Plaintiff to examine the very same witness. It would have been a different matter if the learned Civil Judge would have held that despite earlier order dated 23.01.2017, the Plaintiff could be permitted to examine Mr. Amar Patil, as its witness.

6. Resultantly, it would be necessary to remit the matter to

the learned Civil Judge for a fresh consideration of the application for examination of Mr. Amar S. Patil as a witness for the Plaintiff, in the light of the order passed by the Civil Court on 23.01.2017.

7. In view of the above, the Petition stands disposed of in the following terms:

(a). The impugned order dated 05.08.2017 stands quashed and set aside.

(b). The learned Civil Judge is directed to hear and decide afresh the application (Exhibit 52) filed by the Plaintiff under Order 18 Rule 3(A) of the Code of Civil Procedure for examination of Mr. Amar S. Patil as a witness for the Plaintiff, after providing an opportunity of hearing to the parties.

(c). It is hereby made clear that this Court has not examined the merits of the matter and the learned Civil Judge shall not be influenced by any of the

observations made herein-above, while deciding the application (Exhibit 52).

8. Rule made absolute in aforesaid terms.

(N.J. JAMADAR, J.)