

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14566 OF 2018

Pradip Manakachand Lunavat ..Petitioner.

V/s.

Shantilal Bavudan Chordia ..Respondent.

Mr.Priten P.Killedar for the petitioner.

None for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 8, 2019

P.C.:-

Heard Mr.Killedar, learned counsel for the petitioner.

2. Challenge is to the order dated August 9, 2018 by which the petitioner's application to cross examine the witness No.1 by accepting the cost, came to be rejected by the learned trial Judge.

3. Accordingly, the petitioner was allowed to examine witness No.1 by paying costs of Rs.75/- by order dated August 3, 2010. It is the case of the petitioner that the said costs were offered, but were refused by original applicant.

4. The record indicates that the original applicant examined two further witnesses and at that stage, there was no protest by the present petitioner. Subsequently, the petitioner applied for leave to

cross examine witness No.1 by accepting the costs. This application was rejected by an order dated January 27, 2011. The petitioner has not bothered to challenge this order. Thus, the order attained finality. Thereafter, respondent No.1 in the proceedings filed affidavit in lieu of examination-in-chief. It is at this stage, after a lapse of about two years that the petitioner has once again renewed his request for examination by defendant No.1 by offering to pay costs.

5. In the aforesaid background, it is apparent that the application made by the petitioner was misconceived and was rightly rejected. Assuming that costs were indeed refused by the original applicant, nothing prevented the petitioner from immediately bringing this to the notice of the trial Court or even offering to deposit the same in the trial Court. Instead, after a period of one year, the petitioner made such an application which was rejected by order dated January 27, 2011. There was no challenge to this order. The impugned order has been made on the basis that a similar application taken out seven years later was clearly misconceived and is rightly rejected the same.

6. There is accordingly no case made out to interfere in the impugned order. The petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)