

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

WRIT PETITION NO.10656 OF 2018

**KHARE TARKUNDE SANCHETI CONSTRUCTIONS PVT LTD THROUGH
MANAGING DIRECTOR**

VERSUS

**BALAJI HIRAMAN BARSE THROUGH LRS PADMINIBAI BALAJI BARSE
AND OTHERS**

...

Advocate for the Petitioner : Shri Rathi Swapnil S.

Advocate for Respondents 1A, 1C, 1D and 1E : Shri R.K.Ingole Patil

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th February, 2020

Per Court:

1 On 24.09.2018, I had passed the following order :-

- "1. The petitioner who is the Managing Director of a Construction Company and has appeared in Special Civil Suit No.38/2013 at Nanded through the power of attorney holder, had moved an application Exhibit 61 seeking permission of the Trial Court for appointing a Court Commissioner under Order 26 Rule 4 of the Code of Civil Procedure, so that he could be examined and cross-examined at his residence in Nagpur. The ailments that he is suffering from have been asserted in Exhibit 61 and medical papers in support thereof are placed on record.
2. Grievance is that though the Trial Court has allowed the application, it is directed that the petitioner should travel from Nagpur to Nanded and make himself comfortable in the house of a relative where a Court Commissioner could record his examination and cross-examination.
3. Insofar as the allegations against the petitioner that he frequently travels abroad and also within India to

watch cricket matches is concerned, the learned Advocate for the petitioner assures the Court that on the next date he would produce the passport of the petitioner, including those passports which have expired, in the form of photo copies to counter such allegations.

- 4. Issue notice to respondent Nos. 1A to 1E and 2, returnable on 26/10/2018.*
- 5. Humdast is granted on request.*
- 6. Until the next date, the Trial Court shall adjourn Special Civil Suit No. 38/2013.*
- 7. Copies of the petition paper book for issuance of notice shall be supplied on or before 28/09/2018, failing which, this petition shall stand dismissed without reference to the Court on 29/08/2018."*

2 The learned advocate for the petitioner submits that the Managing Director of the petitioner, namely, Mr.Manohar Ramchandra Tarkunde is about 80 years of age today and has multiple age related ailments. Though he had filed the affidavit in lieu of examination-in-chief of the Power of Attorney Holder, the Trial Court has rejected the said affidavit by order dated 21.12.2016, in view of the objections of the defendants. It is, therefore, submitted that Mr.Tarkunde would ensure that he would undertake a journey to the District Court at Nagpur and his verification and cross-examination can be conducted through video conferencing by the defendants from Nanded.

3 The learned advocate for the defendants is agreeable.

4 In view of the above, this Writ Petition is partly allowed by setting aside the order dated 19.07.2018. The application exhibit 61

would stand partly allowed with the following direction :-

- (a) The learned Trial Court shall pass appropriate orders for making arrangements to record the deposition and cross-examination of Mr.Manohar Ramchandra Tarkunde through video conference and the same can be conducted from the video conference facility at Nanded with the cooperation of the Nagpur District Court.
- (b) The learned Trial Court shall issue appropriate directions to facilitate the recording of evidence of Mr.Tarkunde.

kps

(RAVINDRA V. GHUGE, J.)