

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1902 OF 2020**

Bankim Prasunkumar Mehta	...Petitioner
Versus	
Bhagwandas Haridas Kewalram & Ors.	...Respondents

Mr. Siddharth Samanthray a/w Ms. Faiza Dhanani i/b Mr. Manal A. Dhanani for the Petitioner

Mr. Rushabh Shah a/w Ms. Rinku Valanju i/b R. V. Legal for the Respondent Nos. 1 and 2

Mr. Vipul Shukla for the Respondent Nos. 3 and 4

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 27th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 11th February 2020 passed by the learned Civil Judge, City Civil Court, Greater Bombay, by which the learned Judge noted that the cross-examination of PW 1 is completed.

3 Learned counsel for the petitioner submitted that PW 1-Kishore Kumar Sundardas was in India from 10th February to 14th February 2020 and that the said witness was to be cross-examined during the said period

i.e. between 10th February to 14th February 2020. According to the learned counsel, on 10th February 2020, as there was a demise in the Advocate's family, PW 1 could not be cross-examined and hence, the matter was posted for cross-examination of PW 1 on the next date i.e. on 11th February 2020. On 11th February 2020, the cross-examination of PW 1 commenced and after cross-examining PW 1 for sufficiently long time, the petitioner's Advocate sought time to defer the cross, as he wanted to confront the said witness with certain documents and as such requested that the matter be taken up for recording evidence on the next date i.e. on 12th February 2020. He submits that instead of granting an adjournment, the learned Judge refused to defer the cross and as such closed the cross-examination of PW-1. He submits that the said witness had come specifically to India during the said period i.e. 10th February 2020 to 14th February 2020 in connection with the said case and as such there was no impediment for the trial Court to defer the cross-examination of the said witness by a date, inasmuch as, no prejudice was going to be caused to the said witness. He submits that if the petitioner is not permitted to complete the cross-examination of PW-1, serious prejudice would be caused to the petitioner.

4 Learned counsel for the respective respondents oppose the petition and submit that no interference is warranted in the impugned order.

They submit that PW-1 has specifically come from Bahrain and as such there was no justification for the petitioner's Advocate to seek an adjournment on 11th February 2020. On being questioned, learned counsel submit that PW-1 is now going to be in India from 16th March 2020 till about 20th March 2020.

5 Perused the papers as well as the impugned order. It appears that PW-1 had come to India to depose in connection with Suit No. 7827 of 1997 and was in Mumbai from 10th February to 14th February 2020. During the said period, the said witness i.e. PW-1's cross-examination was to be recorded. It is not in dispute that on 10th February 2020, PW-1 could not be cross-examined, as there was a demise in the family of the Advocate and hence, the matter was posted for conducting the cross-examination of PW-1 on the next date i.e. on 11th February 2020. A perusal of the cross-examination of the said witness shows that the said witness was cross-examined for quite some time on 11th February 2020 and that an application was filed by the petitioner's Advocate for deferring the cross, as the Advocate wanted to confront the said witness with certain documents. The trial Court rejected the said request in view of the same practice adopted by the Advocate i.e. requesting to defer the cross.

6 The said witness i.e. PW-1 had specifically came to India for the purpose of deposing during the said period mentioned above, in the Suit. In this light of the matter, there was no impediment for the trial Court to grant an adjournment for the next date, considering the fact that the Advocate for the petitioner had extensively cross-examined PW-1 on 11th February 2020.

7 Be that as it may, learned counsel for the petitioner submits that the Advocate for the petitioner will conduct the cross-examination on the next date when PW-1 returns from Bahrain i.e. on 16th March 2020.

8 Considering the aforesaid, the petition is allowed. The impugned order noting that the cross-examination of PW-1 is completed, is quashed and set-aside and the petitioner is permitted to conduct further cross-examination of PW-1 during the period from 16th March to 18th March 2020, subject to the petitioner paying 50% of the air fare (Economy Class) that is likely to be incurred by PW-1 for coming to India from Bahrain and going back to Bahrain.

9 Needless to state that the petitioner will not seek any adjournment on 16th March 2020. If the cross of PW-1 is not over on 16th

March 2020 for whatever reason, the petitioner be permitted to cross-examine on the next date. However, it is made clear, that the petitioner will not seek any adjournment.

10 Petitioner to pay 50% of the air-fare from Bahrain to India (to and fro) to PW-1 on 16th March 2020, on his showing the invoice/receipts of payment of ticket.

11 Petition is disposed of on the aforesaid terms.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.