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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5021 OF 2019

Paras Kuvarjibhai Gangani

... Petitioner

Versus

Keshavji Raghavji Parmar

...Respondent

Mr. Mohit Arora a/w Mr. Onkar Chandurkar i/b Prasad Kulkarni and Associates, for the Petitioner.

Mr. Sagar Batavia i/b Mr. M. S. Gandhare, for the Respondent.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 20th February, 2019, passed by the learned 21st Joint Civil Judge, Senior Division, Pune, below Exhibits – 58 and 59 in Special Civil Suit No.1045 of 2013.
3. The preliminary objection of the petitioner is that the learned Judge could not have entertained the affidavit of evidence of the respondent – plaintiff, in the absence of the respondent-plaintiff filing any application

for taking the same on record, in accordance with Order XVIII Rule 3-A of the Code of Civil Procedure.

4. Learned Counsel for the Respondent – Plaintiff does not dispute the fact that no specific leave of the Court was taken for tendering the affidavit of evidence of the plaintiff. He submits that the respondent-plaintiff had taken leave of the Court for leading further evidence of the other witnesses and not of the respondent-plaintiff.

5. Perused the papers including the impugned order. It is not in dispute that the respondent-plaintiff had given power of attorney to his son who was examined as a witness. It appears that thereafter the respondent-plaintiff filed an application and sought leave of the Court for leading further evidence of other witnesses, which was allowed vide order dated 6th August, 2018. It is not in dispute that the respondent-plaintiff instead of examining the other witnesses, pursuant to the leave that was granted filed his own affidavit of examination-in-chief. The said affidavit was taken on record.

6. Learned Counsel for the respondent – plaintiff fairly states that no specific leave was taken of the trial Court to file affidavit of evidence of

the respondent – plaintiff but what was sought was permission to lead further evidence of the other witnesses.

7. Learned Counsel for the petitioner relied on the Judgment of this Court in the case of ***Care Hospitals, Nagpur v/s Dr. Nilesh s/o Digambar Thakre¹***, where after seeking leave the plaintiff therein was permitted to examine himself with certain riders, which are stated in paragraph 7 of the said Judgment.

8. Learned Counsel for the respondent – plaintiff states that the respondent – plaintiff will file an appropriate application in terms of Order XVIII Rule 3-A of the Civil Procedure Code in the trial Court and seek leave of the Court to file affidavit of evidence of the respondent – plaintiff, in terms of the aforesaid judgment.

9. Admittedly, as noted above, no leave of the trial Court was sought by the respondent – plaintiff to file his own affidavit of evidence. In view of the same, the impugned order dated 20th February, 2019, passed by the learned 21st Joint Civil Judge, Senior Division, Pune, below Exhibits – 58 and 59 in Special Civil Suit No.1045 of 2013, is quashed and

1 2019 (3) Mh.L.J. 955

set aside. The respondent – plaintiff is at liberty to file an appropriate application in the trial Court in terms of Order XVIII Rule 3-A of Code of Civil Procedure.

10. If such an application is filed, the learned Judge to consider the same on its own merits, in accordance with law, uninfluenced by the impugned order dated 20th February, 2019.

11. Petition is disposed of in above terms.

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

REVATI MOHITE DERE, J.