

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

WRIT PETITION NO.8255 OF 2022

Madhusudan Brijlal Vakharia & Anr. ... Petitioners
Vs.
Jam-E-Jamshed Private Limited & Ors. ... Respondents

**AND
WRIT PETITION NO.8256 OF 2022**

Madhusudan Brijlal Vakharia & Anr. ... Petitioners
Vs.
Jam-E-Jamshed Private Limited & Ors. ... Respondents

Mr. Darshit Jain i/by Mrs. Divya D. Jain & Mr. Dileep Satale for the
Petitioners in both WPs.
Ms. Sukeshi Bhandari a/w Mr. Akshay Chauhan for Respondent
No.1 in both WPs.

CORAM: ABHAY AHUJA J.

DATE : 20TH JULY 2022

P.C.:

1. By these Petitions, the Petitioners are aggrieved by the orders dated 25th April, 2022 of the learned Judge, Small Causes Court rejecting the applications made by Petitioner No.1 for appointment of Commissioner for his cross-examination in R.A.D. Suit No. 626 of 2005 and R.A.D. Suit No. 625 of 2005.

2. The Petitioner No.1 is a senior citizen who travels from his residence at South Mumbai to his office at Nariman Point. Due to Covid-19 pandemic, he was advised not to travel long distance. Therefore, he made an application for appointment of Commissioner for his cross-examination in the two Suits. He produced the medical certificate in support to demonstrate that he is suffering from heart related ailments and hyper tension because of which he was advised not to travel long distance.

3. After considering the said certificate and rival contentions of the contesting parties in the applications, the learned Judge rejected the applications made by Petitioner No.1, *inter alia*, on the ground that the doctor who issued the certificate holds Diploma in Child Health and does not have expertise in the heart related disease.

4. Mr. Jain, learned Counsel for the Petitioners draws attention of this Court to the medical certificate dated 20th May, 2022 (Exhibit 'K' to Writ Petition No.8255 of 2022 & Exhibit 'L' to Writ Petition No.8256 of 2022), issued by Dr. D. D. Tanna, Consulting Orthopedic Surgeon certifying that Petitioner No.1 is

suffering from OA Lumber Spine-age related with the result that he cannot stand or sit for a long time. The certificate also states that Petitioner No.1 has even otherwise been advised to go easy on his office routine and avoid sitting at a time for more than 10-15 minutes.

5. Ms. Bhandari, learned Counsel for Respondent No.1 submits that the abovementioned certificate was not even before the learned Judge of the Small Causes Court.

6. Having heard learned Counsel for the parties, in my view, the interests of justice would be served if the certificate dated 20th May, 2022 is placed before the learned Judge of the Small Causes Court. Learned Counsel for the parties also agree with the same.

7. In this view of the matter, orders dated 25th April, 2022 in both Suits are set aside and the matters are remanded back for the fresh consideration.

8. Let Petitioners file necessary applications before the learned Judge of the Small Causes Court within two weeks annexing the certificate dated 20th May, 2022 alongwith any other material in support of the applications for appointment of Commissioner in the said Suits. The applications to be considered on their own merits in accordance with law.

(ABHAY AHUJA, J.)