

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1108 OF 2022
WITH
WRIT PETITION NO.1197 OF 2022

Quresh Abdulhusain Ezzi .. Petitioner

Versus

Abhay Vadilal Shah @ Abhaybhai

Vadilal Shah .. Respondent

...

Mr.G.S.Godbole with Ms.Kavita A. Shah for the Petitioner.

Mr.Jaydeep Deo for the Respondent.

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CORAM: RAVINDRA V. GHUGE, J.
DATED : 04th FEBRUARY, 2022

P.C:-

1. By this petition, the petitioner seeks to challenge the order dated 18/11/2021, passed by the trial Court in R.A.E. Suit No.407 of 2016 below Exh.185, which has been rejected.

2. Application (Exh.185) was filed by this petitioner, seeking leave of the trial Court to be cross-examined through video conference. He is PW 1. He resides in Cairo, Egypt. He has made almost 13 visits to India so as to be cross-examined by the defendant. The cross-examination has commenced in August 2018 and has covered almost 40 typed pages. Yet, the

defendant is not concluding the cross-examination. Exh.185 has been rejected on the ground that the petitioner has produced voluminous record and it is not possible to refer to those documents while conducting his cross-examination, through video conference.

3. The learned counsel representing the petitioner submits, on instructions, that the next date in the suit is 10/02/2022. The petitioner would reach India prior thereto so as to be further cross-examined. He is willing to stay in India for a week, which would cover four working days in the next week since Saturday, 12/02/2022 is a non-working day.

4. The learned Advocate for the respondent has strenuously opposed this petition.

5. Considering the order that I am passing in view of the above, I am not required to go into the legality and validity of the impugned order. 40 typed pages is the size of the cross-examination today and the same is still incomplete. There is only one defendant in the suit. Unless the cross-examination of PW 1 is not concluded, there is no question of discharging him and, as such, the second witness cannot step into the witness box.

6. In view of the above, this petition is disposed off with the following directions:-

(a) The learned Judge of Court of Small Causes at Mumbai would give high precedence to this stage in the suit, considering the peculiar facts of the case.

(b) Considering that 10th and 11th February, 2022 are working days, the learned Judge would permit the defendant to cross-examine PW 1 in between 10/02/2022 till 16/02/2022.

(c) The defendant will ensure that the cross-examination is concluded in these five working days and shall not seek an adjournment.

(d) If the defendant seeks an adjournment, the learned trial Court would discharge PW 1 and any application for recalling PW 1 shall not be entertained.

(e) The learned trial Court would permit the cross-examination to be conducted on day-to-day basis so as to be concluded by 16/02/2022. No further time would be granted to the defendant.

7. Call for the case papers in Writ Petition No. 1197 of 2022 at the request of the learned Advocate for the petitioner. The same be taken on the cause-list,

8. Considering the order passed hereinabove, the learned Advocate for the petitioner submits that this second petition would not survive and the same may be disposed off.

9. Accordingly, Writ Petition No.1197 of 2022 stands disposed off.

(RAVINDRA V. GHUGE, J.)