

Nikita

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

WRIT PETITION NO.2192 OF 2019

Mahendra Kantilal Patel and Anr.	... Petitioners
V/s.	
Ankush Narayan Chaudhari	... Respondent

Mr. Bhavin Gada a/w Adv. Ativ Patel i/b L.C. Tolat and Co., for the Petitioners.

Mr. Rohit K. Gupta a/w Mr. Amey Chandhani i/b Mr. Chirag Chanani for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 24, 2023

P.C.:

1. This petition is filed under Article 227 of Constitution of India, 1908 challenges order dated 21st November 2018, passed by the City Civil Court Mumbai, rejecting application of petitioners/original defendants, to delete the portion of affidavit in examination-in-chief of the plaintiff.

2. Learned counsel for the petitioners relying on the judgments of this Court in the case of **Mahabanoo Navroz Kotwal Vs. Piloo Fali Bomanji Amarchand Mansion and Anr.** Reported in (2014) SCC OnLine Bom 615 and another judgment of this Court in **Rajendra Singh Chhatrasal Singh Kushwaha** reported in 2013 (6) Mh.L.J. 802, submitted that the Court cannot permit a party to

permit an irrelevant evidence or evidence in relation to issue even in the affidavit filed by way of examination-in-chief in lieu of oral evidence.

3. Having perused the impugned order, in my opinion, the Civil Court has partly allowed the notice of motion filed by the petitioners. The portion which the Civil Court found irrelevant were directed to be deleted, however, portion which the Trial Court found not necessary to be deleted are kept as it is.

4. According to learned advocate for the petitioners, taking cross-examination of plaintiff in relation to irrelevant evidence would unnecessarily enlarge scope of the cross-examination or at this stage the petitioner is not in a position to decide whether to conduct such examination or not, which causes prejudice to the petitioners and, therefore, interference under Article 227 of the Constitution of India is necessary.

5. The scope of the petition under Article 227 of constitution of India is no longer re-integra. The three judges of Apex Court in the case of **Rajkumar Bhatia Vs. Subhash Chander Bhatia** (2018) 2 SCC 87. The Apex Court relying earlier three Judges bench's decision in the case of **Sadhana Lodh Vs. National Insurance Company** (2003) 3 SCC 524 held that the supervisory jurisdiction of the High Court under Article 227 of constitution of India is confined only to see whether inferior Court or Tribunal has proceeded within the parameters of its jurisdiction. In exercise of jurisdiction under Article 277 of the Constitution of India, the High Court does not act as Trial Court or Tribunal and therefore, cannot

be review or reassess the evidence upon which the inferior Court or Tribunal passed the order assailed before it.

6. Moreover, it needs to be noted that whether a remedy in filing of revision before the High Court under Section 115 has been expressly barred, only in such cases petition under Article 227 of Constitution of India would lie. Therefore, the supervisory jurisdiction conferred by High Court under Article 227 of Constitution of India is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct procedural errors.

7. In the facts of the present case, the effect of refusal to delete the evidence from affidavit of evidence would not amount to failure of justice qua the petitioners. If, ultimately at the final hearing of the suit, it is found that certain evidence which is not necessary for adjudication of the issue involved or not permissible in law, the Court is bound to ignore such evidence. However, at the interlocutory stage, interfering with such order would amount to permitting examination or appreciation of evidence which is not permissible under Article 227 of Constitution of India. The scheme of Code of Civil Procedure creates right to correct such errors in an appeal and such power is conferred on the appeal under Section 105 of the Code of Civil Procedure, 1908. Considering such inbuilt mechanisms provided under Code of Civil Procedure, 1908 and the rationale behind the Amendment Act, 2002 to the Code of Civil Procedure, 1908, it is in the interest of justice that the suits are decided as expeditiously as possible.

8. The petitioners herein are defendants in the suit for recovery. Pendency of the suit shall not affect rights of defendant on the contrary. It will affect the rights of the plaintiff.

9. Therefore, in my opinion, in the absence of proof of failure of justice, no interference in the impugned order is called for.

10. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)