

SA Pathan

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

WRIT PETITION NO.13361 OF 2022

Om Prakash Sharma

... Petitioner

V/s.

Madanlal Mehra & Ors

... Respondent

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Mr. R. A. Shah a/w Mr. Mohammed Lokhandwala i/by
Mansukhlal Hiralal & Co., for petitioner.

Mr. Mr. Jai Chhabria a/w Mr. Aashdin Chivalwala a/w
Mr. Rohan Vasa i/by Argus Partners, for respondent
Nos.4(a), 4(b), 5 & 8.

Mr. Priyank Kulkarni i/by Mr. P. S. Chambers, for
respondent No.12.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 1, 2023

P.C.:

1. By the impugned order, the Trial Court allowed plaintiff's witness Naresh Shah to be examined before the plaintiffs.
2. The reason for filing such application was that Naresh Shah is husband of plaintiff No.5. It is stated that the plaintiff No.8 who initially intended to file affidavit for evidence, he is a senior citizen and does not reside in India and on the date of filing of application he was out of India.
3. The Trial Court has passed order on 26 November 2021. During the course of pendency of writ petition, the plaintiff No.8 is

now residing in India, he is available to give his evidence. Therefore, it would be in the interest of justice that the affidavit filed by the witness as per impugned order dated 26 November 2021 kept as it is. However, plaintiffs shall examine themselves and thereafter, affidavit filed by the witness in furtherance of impugned order shall be considered in accordance with law and the defendants be permitted to cross-examine the said witness.

4. Since, the plaintiff No.8 is available for giving evidence, the cause for filing of Notice of Motion for examination of witness Naresh Shah no longer survives. Hence, following order:

a) The affidavit in lieu of examination-in-chief shall be considered in accordance with law after the plaintiffs themselves examination.

5. With this clarification, the writ petition stands disposed of.

(AMIT BORKAR, J.)