

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7732 OF 2023

Farida Huseinibhai Khokhawala
Nee Farida Kmohammed Shattaf

...Petitioner.

Versus

Humaid Mohammed Humaid & Anr.

..Respondents.

Mr. Ashwin Shete and Mr. Yash Pandya i/b Jayakar & Partners for the petitioner.

Mr. Sushil C. Matkar i/b M/s Corps Legal for respondent.

Coram : Sharmila U. Deshmukh, J.

Date : June 28, 2023.

P. C. :

1. Yesterday, in this matter urgent circulation was sought as the matter had been listed before the trial Court today, i.e., on 28th June 2023. Considering the submissions of learned counsel for the petitioner that urgent relief is sought, the matter was listed today on supplementary board.

2. The challenge in the petition is to the order dated 8th June 2023, copy of which is annexed at page 294 of petition. A perusal of the said order indicates that an application was moved by the respondent–plaintiff seeking an adjournment of one week for the

reason that the plaintiff's witness was in Dubai and hence unable to adduce evidence. This application was allowed by the trial Court subject to payment of cost of Rs.1,000/- and the matter was adjourned to 28th June 2023, i.e., today. This Court is informed that today, the presiding Judge is not available.

3. Learned counsel for the petitioner has taken this Court through the entire roznama to contend that the plaintiff initially sought to examine the power of attorney and thereafter changed his stand and sought to examine himself. He would further contend that after seeking various adjournments, the plaintiff has again reversed his stand and now seeks to examine the power of attorney and for the said purpose, sought adjournment.

4. This Court is unable to comprehend as to how the application for adjournment granted by the trial Court can be said to be an urgent issue, seeking the listing of writ petition on supplementary board. If the application is perused, it is a mere application for adjournment. Learned counsel for the petitioner is unable to demonstrate any infirmity in the order granting adjournment apart from stating that the plaintiff is reversing his stand and after seeking to examine his power of attorney, sought to examine himself and thereafter again

seeking to examine the power of attorney. The fact remains that the affidavit of evidence of the power of attorney holder is filed and subsequent thereto the documents were marked. The evidence is not closed. Subsequent thereto, for the reason stated in the application, the trial Court considered it prudent to allow the application for adjournment. There was no tearing hurry for the learned counsel appearing on behalf of the petitioner to mention this writ petition stating that the urgent reliefs are sought. It was simpliciter an order on adjournment application. Although this is sought to be disputed by learned counsel for the petitioner stating that this is not an application for adjournment, this Court finds upon perusal of the application and impugned order, that an application for adjournment of one week was sought and by the impugned order the said application is allowed subject to payment of cost of Rs.1,000/-.

5. Apart from that, there is nothing on record to demonstrate that any application was filed by the petitioner objecting to the change in stand by the plaintiff or that an application was moved for closure of evidence of power of attorney once the respondent – plaintiff contended that he would be examining himself instead of power of attorney. That being the position, this Court finds that the present petition is nothing but a luxury petition and judicial time has

been invested by seeking urgent circulation for such a matter, which requires imposition of cost.

6. In view of the above, writ petition stands dismissed with cost of Rs.5,000/- (Rs.Five Thousand only) to be paid by the petitioner to Kirtikar Law Library, High Court of Bombay, Mumbai within a period of four weeks from today.

[Sharmila U. Deshmukh, J.]