



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

WRIT PETITION NO. 9145 OF 2023

Jam-e-Jamshed Private Limited Petitioner
v/s.
Madhusudan Brijlal Vakharia and ors. Respondents

Ms. Sukeshi Bhandari for the Petitioner.
Mr. Jal F. Daruwalla for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th AUGUST, 2023.

P. C. :-

. The Petitioner who is the plaintiff in the suit, has challenged the order dated 01/04/2023 whereby the learned Judge, Small Causes Court at Mumbai has allowed cross-examination of DW1 on commission. By the impugned order, the learned Judge has appointed the Court Commissioner to record cross-examination of DW1 at his office address and has further directed the Petitioner-plaintiff to deposit sum of Rs.5,000/- towards Court Commissioner fees.

2. It is stated that the defendant is a senior citizen of 83 years of age and has several ailments. He is unable to stand continuously and for this reason, the Application was filed to record his cross-examination on commission, either in his office or in the library of the Small Causes

Court.

3. Learned counsel for the Petitioner and Respondents agree to record cross-examination of DW1 in the Library of Small Causes Court, Mumbai. The defendant having moved the application, the learned Judge was not justified in directing the plaintiff to bear the cost of the Commissioner. Learned counsel for the Respondent-defendant states that the defendant shall deposit Rs.5,000/- towards Court Commissioner fees within 15 days from the date of this order.

4. In the light of the statement made by learned counsel for the respective parties, the Petition stands disposed of with directions to appoint Court Commissioner to record cross-examination of DW1 – Madhusudan Brijlal Vakharia and re-examination if any, in the Library of Small Causes Court, Mumbai within a period of three weeks. The Respondent-defendant shall deposit Rs.5,000/- towards fees of the Court Commissioner within a period of 15 days from the date of this order.

(SMT. ANUJA PRABHUDESSAI, J.)