

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

WRIT PETITION NO. 9023 OF 2022

Mohan Mahadev Mali

...Petitioner

V/S

Prabhakar Mahadev Mali & Ors.

...Respondents

...

Mr. Mohansingh U. Rajput appointed as Legal Aid Panel Advocate for the Petitioner.

Mr. Dushyant Pagare, for Respondent No.1.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 16 JUNE 2023.

P.C.:

1. By this petition, petitioner challenges order dated 24 September 2021 passed by the IInd Joint Civil Judge Junior Division, Uran rejecting application of petitioner/defendant seeking adjournment for examination of Mr. N.R. Kapatkar, Retired Sub-Registrar of Assurances as a Defence Witness. It appears that the Petitioner/Defendant had showed willingness to produce the concerned witness through Video-Conferencing considering the fact that he is at advanced age and residing at Pune.

2. The trial Court has proceeded to reject the application holding that the Will is required to be proved by examining the attesting witnesses and that evidence of Sub-Registrar of Assurances would be irrelevant. In my view, whether the Will can be proved on the basis of evidence of Sub-Registrar is an all together different matter. The learned Counsel for the Respondent-Plaintiff submits that what is filed by the Petitioner-defendant before the trial Court is merely a certified copy of the Will and not the original Will and that therefore the same cannot be marked in evidence. This again is an altogether different issue.

3. The Petitioner desired to examine a particular witness who could not remain present on 24 September 2021. Petitioner-defendant wants to examine him through Video-Conferencing facility as the witness resides at Pune and is at the advanced age of 85 years. Now that the Video-Conferencing facilities are widely available in all Courts, in my view, the trial Court can permit Petitioner-Defendant to examine Shri. N.R. Kapatkar, Retired Sub-Registrar of Assurances as witness through Video Conferencing facility. The learned Counsel for the Petitioner assures the Court that on the next date of hearing, necessary arrangements at the witness' end would be made by the Defendant for examination of the concerned witness through Video-Conferencing facility and that no further adjournment in the matter would be sought.

4. Needless to say that I have not decided the issue of admissibility of the concerned document sought to be proved through

the evidence of Mr. N.R. Kopatkar. This is a separate issue which would be considered by the trial Court independently.

5. The Writ Petition is accordingly allowed. Order dated 24 September 2021 passed by the Civil Judge Junior Division, Uran on application at Exhibit-262 is set aside. The trial Court shall proceed to permit the Petitioner/Defendant to examine Mr. N.R. Kapatkar, Sub-Registrar of Assurances as his witness through Video-Conferencing facility.

6. Needless to say that if the Petitioner/Defendant fails to make necessary arrangements with the witness for his examination through Video-Conferencing facility, the trial Court shall proceed ahead by assuming that the Petitioner/Defendant is not interested in examining the said witness.

7. The learned Counsel for the respondent-Plaintiff urges before this Court that the trial Court be directed to decide the suit expeditiously within a period of six months. I am not aware of pendency of cases before the trial Court. However considering the fact that the Suit is pending since the year 2000, I am sure that the trial Court will accord due priority to the same considering the pendency of cases before it. No specific directions in this regard is however issued.

SANDEEP V. MARNE, J.