

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 520 OF 2022**

Sarosh Behram Bharucha & anr.

....Applicants

Versus

Nozer Rustomji Wadia & Ors.

....Respondents

Mr. Cyrus Bharucha along with Mr. Tushad Kakalia i/b. Ms. Bhakti Popat, Advocates for the Appellants.

Mr. Kunal Bhanage i/b. Mr. Akshay Pawar, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 6th MARCH 2023.

P.C. :

1. The applicants have impugned the order passed by the Small Causes Court below Exhibit "41". By this order, the Trial Court has rejected the application filed by applicants herein/defendant No.2 to reject the affidavit of examination-in-chief of Hosi R. Wadia at Exhibit "36" and to direct the plaintiffs to file fresh affidavit of examination-in-chief or in the alternative make a note before the cross-examination of PW1 that the defendants did not cross-examine PW1 on the aspect of the said affidavit as set out in the application.

2. I have heard both learned counsel. Considering the submissions of both learned counsel, I pass the following order :

(i) The order below Exhibit “41” is modified as under :

“The trial court while recording the cross-examination by defendant No.2 shall record objection put forth by learned counsel for defendant No.2 in respect on any paragraph of affidavit of examination-in-chief of plaintiff and permit defendant No.2 to cross examine the witness on that paragraph and consider the legality of that paragraph at the time of final hearing of the suit.

3. In view of the above, the civil revision application is disposed of.

4. Pending civil/interim applications, if any, stand disposed of.

(S. G. DIGE, J.)