



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12108 OF 2023

Vishal Harish Chellaram and Anr.

...Petitioners.

Versus

NRB Bearings Ltd.

..Respondent.

Mr. Ajit Anekar and Ms. Priyanka Srivastava i/b Auris Legal for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : December 12, 2023.

P. C. :

1. Challenge in the petition is to the order dated 14th June 2023 passed by the revisional court rejecting the revision and upholding the order of trial court dismissing the application of petitioner seeking deletion of certain portion from the affidavit of evidence filed by PW-2.

2. Learned counsel appearing for the petitioner raised two submissions for consideration; firstly, that evidence of PW-2 is beyond pleadings. In support of the said submission, he relied upon averments in the plaint which are at page 13 of petition, in which it is stated that the plaintiff has no other property suitable and available to meet its requirement and that the premises are required for

accommodating the senior officers of the plaintiff. He further points out the affidavit of evidence of PW-2 wherein in paragraph 6, it is stated that one of the flats in the building was given on temporary basis to a bank and was thereafter given to another corporation and that upon expiry of licence terms and upon recovery of possession, the said flat shall be allotted to one of the directors/officers of plaintiff. According to the petitioner, evidence goes beyond the pleaded case of the plaintiff and, as such, requires to be deleted from the affidavit of evidence. The other submission raised is that the evidence of PW-2 nullifies the admission given by PW-1 in the cross-examination.

3. As regards the first issue raised by learned counsel appearing for the petitioner that evidence of PW-2 is beyond the pleadings, a learned Single Judge of this Court in case of *Harakchand Gulabchand Dhoka v. Kashinath Narsingh Marathe* [(2010) 4 AIR Bom R 31] held that if on the basis of objection, the Court finds that certain statements made in the affidavit are beyond scope of pleadings, the Court can always discard that part of evidence while delivering final judgment and on basis of such objection Court has no power to order deletion of certain portions of the affidavit. In addition, at the time of cross-examination the attention of witness can be drawn to the

objectionable portion. For that purpose, that portion of evidence of PW-2 cannot be deleted.

4. As regards the other submission that evidence nullifies the admission given in cross-examination, accepting the reasoning of petitioner would mean that after one witness has been examined, no other witness can be examined in any proceedings inasmuch as the witness is usually examined to support the case of petitioner.

5. In the light of above, I find no reason to interfere with the impugned order. Petition fails and is dismissed.

6. Needless to clarify that the observations made hereinabove are confined to examine the validity of impugned order and all objections raised by the petitioner during trial are to be decided by the trial court on its own merits and uninfluenced by the observations made hereinabove.

[Sharmila U. Deshmukh, J.]