



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11389 OF 2023

Merlyn Kennedy D'Abreo and Anr.

... Petitioners.

Versus

Fazal Abbas Sayed

... Respondent.

Mr. Aseem Naphade a/w Mr.B.A.Dlima i/by Mr.I.A. Dlima, Advocate for the Petitioners.

Mr. P.J. Thorat i/by Ms.Aditi Naikare, Advocate for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 28, 2023.

P. C. :

1. The challenge in the petition is to the order dated 1st August, 2023, rejecting the Petitioners' application for discarding the evidence of the Respondent-Plaintiff's witness-PW-2. By the impugned order, the trial Court has rejected the application by holding that the aspect with regard to the necessary pleadings in support of the statement made in affidavit in lieu of evidence of PW2 is a matter to be considered when suit is to be decided.

2. Mr. Naphade, learned counsel appearing for the Petitioners would plead that after holding so, in view of the earlier observations of the trial Court that it is not necessary for the plaintiff to plead

about the marriage of his son, his right to object to the evidence on the ground of absence of necessary pleadings in the plaint is foreclosed.

3. In my view, considering that the objection is on the basis that it is not supported by the necessary pleadings, the objection will have to be considered after the cross-examination of the witness and at the time of final arguments. In that view of the matter, it is not necessary to go into the merits of the order and it would suffice, if it is clarified that the objection as regard the evidence of PW2 that it is without the necessary pleadings, will have to be considered by the trial Court after the cross-examination of the PW2 and at the time of final arguments in the mater.

4. Petition is disposed with the above clarification.

(Sharmila U. Deshmukh, J.)