

SA Pathan

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

WRIT PETITION NO.15692 OF 2023

Norbert S. Mascarenhas

... Petitioner

V/s.

Valerian D. Almedia & Ors

... Respondents

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Mr. M. S. Bhandari i/by Ms. Pranjali Bhandari, for
Petitioner.

Mr. Bhimrao A. Powar, for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2023

P.C.:

1. The petitioner filed a Chamber Summons. The petitioner is original defendant No.1 in a suit for declaration.
2. During trial, the plaintiff filed an affidavit of evidence. However, during cross-examination, the plaintiff stated that, he does not know about the contents of affidavit in examination in chief. Based on this, defendant No.1 filed a Chamber Summons for discarding affidavit in lieu of examination in chief.
3. The Trial Court by impugned order postponed to adjudication on the admissibility of such affidavit at proper stage of appreciation of evidence.

4. Learned Advocate for the petitioner relying on the judgment of this Court in the case of **Harish Loyalka and Another Vs. Dileep Nevatia and Others**, in Suit No.3598 of 1996 on 7 April 2014 submitted that this Court has taken a view in case of admissibility of evidence, such issue needs to be decided at the stage when the issue is raised and cannot be postponed till the final decision of the suit.

5. In view of the said judgment, the Trial Court was under obligation to decide the Chamber Summons on merits. Hence, following order:

i) The impugned order passed by the Trial Court dated 17 October 2023 in Chamber Summons No.1523 of 2023 in L. C. Suit No.45 of 2016 is set aside.

ii) Chamber Summons No.1523 of 2023 is restored to the file of Trial Court to be decided in accordance with law.

6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)