

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7643 OF 2022

Shriram General Insurance Company Limited .. Petitioner

Versus

Tarabai Kale and Ors. .. Respondents

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• Mr. Pandit Kasar, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Kasar, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 12.02.2024 and the Writ Petition.
- 4.** This Writ Petition is filed in the year 2022. The order under challenge is passed in an Application filed below Exhibit-58. The said Application is at Exhibit-C, page No.28 of the Writ Petition. The title and nomenclature of the said Application filed reads 'It is an Application filed under Section 165 of the Evidence, Act, 1872'.
- 5.** By virtue of the said Application, Applicant who is Respondent i.e. Insurance Company desired issuance of witness summons to the owner of motorcycle bearing No.MH42AW2590. All requisite details have been stated in the Application. The case is of

“hit and run” and compensation as claimed for by the Applicant. The said Application has been rejected by the impugned order which is a hand written order dated 29.04.2022. Rejection is simplicitor on the basis that there exists no provision under Section 165 of the Evidence Act, 1872 which can be invoked by the Respondent for issuance of witness summons or examining witness and hence Application is rejected.

6. At the outset, Mr. Kasar would submit that nomenclature and subject of the Application is *prima facie* incorrect. There is an error apparent on the face of record of the Application itself. Application ought to have been filed under Order XVI of the Civil Procedure Code, 1908 (for short ‘CPC’) and not under Section 165 of the Evidence Act, 1872.

7. In that view of the matter, he would submit that though the said Application otherwise clearly conveys that it is Application seeking issuance of witness summons with all requisite details but because of its title, has been rejected by the Trial Court.

8. After perusing the said Application and the impugned order, I am convinced that there is an inadvertent mistake in addressing the Application. The Application ought to have stated that it is filed under Order XVI of the CPC to enable the learned Trial Court to pass appropriate orders and issue necessary process in accordance with

law.

9. In that view of the matter, the learned Trial Court shall consider the Application filed below Exhibit-58 as Application filed below Order XVI of Civil Procedure Code, 1908, hear the Insurance Company and pass appropriate orders in accordance with law.

10. Necessarily order dated 29.04.2022 rejecting the Application is quashed and set aside. Considering the nature of the present suit proceedings, the learned Trial Court is directed to decide the Application filed below Exhibit-58 by considering the same as Application filed below Order XVI of CPC and determine the same within a period of four weeks from today after hearing both sides.

11. Needless to state that hearing of the said Application shall be strictly in accordance with law and on merits.

12. With the above directions, Writ Petition stands allowed and is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]