

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 66 OF 2025**

Pandurang Shrinivas Kulkarni (Deceased) ..Applicants
Through LRs Sushila P Kulkarni & Ors
Versus
Bhaskar S/o Devidas Kulkarni & Ors ...Respondents

Mr. Vishawanath Patil, i/b Pradip Patil, for the Applicants.

**CORAM: N. J. JAMADAR, J.
DATED : 11th FEBRUARY 2025**

P.C.:

1. Heard learned Counsel for the Applicant.
2. The challenge in this Application is to an order dated 25th November 2024 passed by the learned Civil Judge, Madha, whereby the Application filed by Defendant No.1 to record his evidence on commission came to be allowed.
3. The learned Civil Judge was persuaded to allow the Application as Defendant No.1 is 90 years of age and the Defendants have filed a counter claim.
4. Mr. Patil, learned Counsel for the Applicants, submitted that the order passed by the trial court though apparently innocuous causes great prejudice to the Plaintiffs. The order is in the teeth of the

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provisions contained in Order XVIII Rule 1 of the Code of Civil Procedure 1908 ("the Code"). The Defendants have not admitted any part of the claims of the Plaintiffs and, therefore, Plaintiffs have right to begin.

5. Reliance was placed on a decision of Delhi High Court in **Sabiha Sultana & Ors Vs Ahmad Aziz & Anr.**¹

6. The Application to record the evidence of Defendant No.1 was made on the premise that Defendant No.1 is 90 years of age and unable to move. The crucial fact which weighed with the trial court was that, Defendant No.1 has also filed a counter claim. It was, therefore, necessary to record the evidence of Defendant No.1. Since, the Defendants have filed a counter claim, incontrovertibly the status of the Defendants is that of Plaintiffs in the said counter claim.

7. In this view of the matter, the learned Civil Judge does not seem to have committed any error in directing recording of evidence of Defendant No.1 who is of advanced age, on commission. Hence no interference is warranted in exercise of supervisory jurisdiction.

8. Civil Revision Application stands dismissed.

9. The trial court is requested to hear and decide the suit as expeditiously as possible.

[N. J. JAMADAR, J.]

1 2017 SCC OnLine Del 10229.