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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5346 OF 2025
WITH
INTERIM APPLICATION NO. 7160 OF 2025
AND
WRIT PETITION NO. 6858 OF 2025**

Kurla Malayalee Samajam ... Petitioner
Charitable Trust through
Mahesh Subramaniam

Vs.

M/s. Rajesh and Associates ... Respondents
and Others

Mr. Sachin Dhakepalkar i/b. Mr. Wilson Cherian for the
Petitioner.

Mr. Mohan Tekavde a/w. Ms. Sanjana Shivkar and Ms. Rhea
Jaiswar for Respondent No.1.

Mr. Zaid S. Ansari a/w. Mr. Mangesh Kokane and Mr.
Raghavendra Rao i/b. Mr. Zaid S Ansari and Associates for
Respondent No. 7.

CORAM : GAURI GODSE, J.

DATE : 15th JULY 2025

ORDER :

Writ Petition No. 6858 of 2025

1. This petition is filed by the plaintiff making a grievance
that the application at Exhibit-41 is not decided by the trial

court and the only order passed on 20th August 2024 is that the application is disposed of as filed. The petitioner is the original plaintiff. The application at Exhibit-41 is for appointment of Court Commissioner to record the evidence of the plaintiff. After the application was filed an order was passed on 14th June 2022 directing other side to say on Exhibit 41. There is no dispute that there is no say filed on Exhibit 41.

2. Learned counsel appearing for respondent no. 7 who is the contesting respondent submits that an appropriate reply to Exhibit-41 shall be filed in the trial court before the next date.

3. Since the application at Exhibit-41 is sought to be contested by respondent no. 7, it would be appropriate that liberty is granted to file appropriate reply and then decide the application at Exhibit-41. Considering the limited grievance made in this petition and in view of the aforesaid submissions made on behalf of respondent no. 7 nothing survives for further consideration. So far as respondent no. 1 is concerned, learned counsel for respondent no. 1 submits that there is no objection if Exhibit 41 is allowed. So far as

respondent no. 8 is concerned, the suit has proceeded without written statement of respondent no. 8.

4. Learned counsel for the petitioner submits that respondent no. 8 is not represented in the suit and the suit has proceeded ex-parte against respondent no. 8. He submits that though appearance is filed, no one appeared in the suit for respondent no. 8. So far as respondent no. 2 is concerned, the suit stands abated. The suit is withdrawn as against respondent nos. 3 to 6.

5. In view of the aforesaid, the petition is disposed of by passing the following order :

(i) Respondent no. 7 shall file his reply to Exhibit-41 before the next date in the trial court with an advance copy to the learned Advocate for the plaintiff.

(ii) The trial court shall decide the application at Exhibit-41 in accordance with law.

(iii) Writ Petition is partly allowed in the aforesaid terms.

5. In view of the disposal of the appeal, the pending interim application is disposed of as infructuous.

Writ Petition No. 5346 of 2025

6. This petition is filed by the original plaintiff to challenge the order dated 20th March 2025 dismissing Notice of Motion No. 395 of 2024. This motion is filed by the plaintiff to set aside order dated 21st December 2024 closing the plaintiff's evidence. Learned counsel for the petitioner submits that an application at Exhibit 41 was filed in the suit praying for appointment of the Court Commissioner to record plaintiff's evidence. In that application the learned Judge had directed the other side to say. Though there was no say filed, learned Judge disposed of the application at Exhibit 41 as filed. He submits that by a separate order this court has partly allowed the petition and restored Exhibit 41 to file by permitting the contesting respondent no. 7 to file reply.

7. Learned counsel for the petitioner submits that on 21st December 2024 when the plaintiff filed application for adjournment on the ground that another writ petition was pending in this court, the learned Judge passed an order to close the plaintiff's evidence. He submits that the plaintiff has taken steps for recording evidence by filing the application at Exhibit 41. He therefore submits that the learned Judge with

a hyper technical approach has closed the evidence of the plaintiff by not deciding the application at Exhibit 41 for appointment of the Court Commissioner to record plaintiff's evidence.

8. Learned counsel for the contesting respondent no. 7 submits that in view of the order passed in Writ Petition No. 6858 of 2025, respondent no. 7 would have no objection if this petition is allowed. He, however, submits that all the contentions on merits of the suit and the merits of the application at Exhibit 41 be kept open.

9. In view of the aforesaid peculiar facts and circumstances, I see no reason why the plaintiff should not be permitted to lead evidence. Considering that the application at Exhibit 41 was already filed by the plaintiff, there was no reason for closing the plaintiff's evidence,

10. A party's right to lead evidence cannot be foreclosed by passing such hyper technical orders. This is therefore a fit case to exercise powers under Article 227 of the Constitution of India for permitting the plaintiff to lead evidence. The petition is therefore allowed by passing following order :

- (i) The impugned order dated 20th March 2025 passed by the City Civil Court, Mumbai in Notice of Motion No. 395 of 2025 is quashed and set aside.
- (ii) Notice of Motion No. 395 of 2025 is allowed.
- (iii) Order dated 21st December 2024 passed in S.C. Suit No. 406 of 2014 closing the plaintiff's evidence is quashed and set aside.
- (iv) The plaintiff is permitted to lead evidence.
- (v) The rival contentions of the parties on the merits of the suit as well as merits of the application at Exhibit 41 are kept open.
- (vi) Writ Petition is disposed of in the aforesaid terms.

11. In view of the disposal of the petition, pending applications, if any, are disposed of as infructuous.

12. Learned counsel for respondent no. 7 points out that this court vide order dated 12th June 2017 in Appeal from Order No. 765 of 2016 had directed that the suit shall be disposed of by January 2019. Considering the peculiar facts and circumstances of the case the suit has remained

pending. However, in view of the facts and circumstances of the case the time granted by this court vide order dated 12th June 2017 is extended for one year from today.

13. The parties shall co-operate for early disposal of the suit and shall not seek unnecessary adjournments.

[GAURI GODSE, J.]