

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5640 OF 2025

Nitin S/o. Hamraj Shanji Thakkar

...Petitioner

Versus

Kankuben Wd/o. Sha Hansraj Gangji

Alias Hansraj Gangji Kuthia & Ors.

...Respondents

Mr. Sushil S. Upadhyay i/b Mr. Ashok M. Saraogi, for the Petitioner.

Mr. Bhavik G. Lalan a/w Mr. Ashish P. Pawar, for the Respondent No.1 to 6.

CORAM: MADHAV J. JAMDAR, J.

DATED: 2nd MAY 2025

P.C.:

1. Heard Mr. Upadhyay, learned Counsel appearing for the Petitioner and Mr. Lalan, learned Counsel appearing for the Respondent Nos.1 to 6.

2. The challenge in this Writ Petition is to the order dated 4th April 2025 passed by the Revisional Court of the Small Causes Court, Mumbai in Revision Application No.46 of 2025 in Exhibit-114 in RAE Suit No.900/1443 of 2012 as well as to the order dated 31st January 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-114 in RAE Suit No.900/1443 of 2012. In the said Application bearing Exhibit-114 prayer is made to set aside “No Cross” order dated 3rd October 2024 and further prayer is made to recall PW-1 for further cross-examination. The said Application has been rejected by the impugned order dated 31st January 2025 passed by the learned Trial

Court and said order dated 31st January 2025 is confirmed by the Revisional Court by dismissing the Revision Application by the impugned order dated 4th April 2025.

3. It is the main contention of learned Counsel appearing for the Petitioner that Petitioner was incarcerated for a period from 19th July 2024 till 18th January 2025 as he was arrested in proceedings filed under Section 138 of *Negotiable Instruments Act, 1881* (“**NI Act**”). He therefore submits that the impugned orders be quashed and set aside and the Petitioner be allowed to cross-examine the PW-1.

4. On the other hand, learned Counsel appearing for the Respondent submitted that there are 55 dates starting from 29th January 2018 till 3rd October 2024 and wherein on number of occasions time was granted to the Defendants as a last chance to conduct the cross-examination of the PW-1. He submits that out of those 55 dates only 4 dates are affected by the alleged difficulty of the Petitioner that he was in custody between 19th July 2024 to 18th January 2025. He submits that the Petitioner is Defendant No.2 and there are other Defendants. He submits that in the facts and circumstances impugned order be not set aside.

5. Perusal of the record shows that the evidence affidavit of the PW-1 was filed on 6th June 2017 and as the Defendants were not conducting the cross-examination, last chance was given by order dated 24th August

2018 to conduct the cross-examination of the PW-1. Thereafter, again the adjournment was granted on 18th October 2019 to conduct cross-examination of PW-1 by imposing cost of Rs.500/-. By order dated 25th February 2020 last chance to conduct cross-examination of the PW-1 was granted to the Defendant. Thereafter, again adjournment was granted to conduct cross-examination of PW-1 on 13th June 2023, on payment of cost of Rs.300/-. On 11th August 2023 no cross order was passed. On 3rd November 2023 adjournment was granted for cross of PW-1 on payment of cost of Rs.200/-. Again on 5th December 2023 last chance was granted for cross-examination of PW-1 on payment of cost of Rs.1,500/-. Thereafter, no cross order was passed on 27th February 2024. By order dated 22nd March 2024 on payment of cost of Rs.2,000/- no cross order passed on 27th February 2024 was set aside. Thereafter also cross of PW-1 was not conducted and ultimately again no cross order was passed on 3rd October 2024.

6. Perusal of the record shows that to prolong the hearing of the suit PW-1 is not being cross-examined from 2017 till 2024. The Petitioner i.e. Original Defendant No.2 was incarcerated from 19th June 2024 till 18th January 2025 concerning offence under Section 138 of the NI Act. However, before that period at least on two occasions no cross order was passed and at least on seven occasions adjournment was granted for conducting cross-examination of PW-1 by imposing cost as a last

chance.

7. The plaint shows that there are other Defendants and therefore there was no impediment in conducting the cross-examination by the learned Advocate of the Defendants. It is required to be noted that there is common written statement filed by the Defendants Nos.1 to 3 and the common Advocate represents them. The present Petition has been filed only by Defendant No.2.

8. The suit premises are commercial premises in prime commercial locality of Mumbai i.e. Colaba. Thus, it is clear that just to ensure that the eviction suit filed by the Respondent Nos. 1 to 6 i.e. Plaintiffs under the provisions of the *Maharashtra Rent Control Act, 1999* (“**MRC Act**”) is delayed, the PW-1 is not cross-examined for last about 8 years, as the evidence affidavit of the PW-1 was filed on 6th June 2017.

9. Accordingly, no case is made out for interference under Article 227 of the Constitution of India. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]