

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
BHARUCH.

SPECIAL CIVIL SUIT NO.98 OF 2006

Order Below Exhibit –118

(1) The present application vide Exh.-118 dated 27/02/2026 the application has been preferred by the Ld. Advocate of the plaintiff, wherein application on behalf of the plaintiff under the District Courts of Gujarat State for the use of electronic communication and Audio-Video Electronic means Rules 2025 read with Section 151 of the Code of Civil Procedure, 1908 seeking permission for recording of Cross-Examination of plaintiff's witnesses through Video Conferencing Mode and it is prayed by the plaintiff that pass an order permitting the cross examination of Plaintiff witnesses through video conferencing and any other order this Court may deem fit.

(2) That the present matter is pending adjudication before this Hon'ble Court and is presently at the stage of evidence of the plaintiff. The plaintiff has filed the evidence affidavits of Ms Payal Saxena(PW-1). The plaintiff seeks to file two additional evidence affidavits of the Surveyor, Mr. Yogesh P. Gandhi(PW-2) and Forensic Expert, Miss Louise Russell(PW-3).

(3) That PW-1 is based out of Gurugram, while PW-2 is based out of Mumbai. The plaintiff submits that requiring their physical presence before this Hon'ble court for purpose of cross examination would cause undue hardship and inconvenience to both the plaintiff and witnesses. Further, due to advanced age and

health issues of PW-2, it would be inconvenient for the witness to be present in person for cross examination and PW-3 is presently based in London, United Kingdom and therefore, her physical examination will cause substantial financial burden and logistical difficulty for the plaintiff. Therefore it is prayed that appropriate directions under Order 26 Rule 5 of Code of Civil Procedure Code, 1908 read with the Video Conferencing Rules may be passed for her cross examination through video conferencing. The plaintiff undertakes to ensure compliance with the Video Conferencing Rules as well as further directions that may be issued by this Hon'ble Court.

(4) Defendant No.1 has filed his objection vide Exh.-121 against above application of plaintiff vide Exh.118 for application conducting the cross examination of witnesses through Video Conferencing. Mr. Sanjay Pathak, Authorized representative, defendant No's.1 company and states that it is trite law that a witness should be examined in open court. While the Code of Civil Procedure, 1908 does not preclude the examination of a witness by video conferencing, such examination is not a matter of right, subject to the principles of fair trial, effective cross examination and proper appreciation of evidence. It was incumbent upon the plaintiff to make out sufficient grounds to justify its request that all witnesses(including witnesses who reside in India) be cross examined by video conferencing. However, the plaintiff has failed to do so. The defendant is entitled to a full opportunity of cross examination which entails a right to conduct an effective cross examination not prejudiced by technological limitations which are more particularly set out

below. The defendant has no objection to PW-3's evidence being conducted over video conferencing given that PW-3 is a resident of London, United Kingdom, provided that such liberty also be permitted to this Defendant's witnesses, if any and when the need arises. Admittedly, PW-1 is aged 45 years and is based out of Gurugram. Gurugram is well connected to Bharuch by air as well as by rail. The plaintiff does not produced that PW-1 suffers from any ailment and or condition which precludes her from travelling to Bharuch. On the contrary, conducting PW-1's evidence over cross examination may result in significant challenges and consequently limit this Defendant's ability to conduct an effective cross examination. Illustratively, the Defendant is entitled, during cross examination, to confront the witnesses with documents should the cross examination be conducted over video conferencing, Defendant's ability to confront the witness with the document may be severely curtailed by any technological limitations. During the course of cross examination, this Hon'ble Court may record the demeanor of a witness during Cross-Examination. It is also settled law that a witness under cross examination should not be assisted and or prompted. Should the witness be made available for cross examination, there is no way for this defendant and this Hon'ble court to assume that the witness is not being assisted and, prompted during the course of cross examination. Each of the above would run contrary to the principles of fair play, justice and would preclude this defendant from conduct an effective cross examination. It is strictly without prejudice to the defendant's right to conduct a full and effective cross examination and defendant craves leave to take appropriate steps in this regard, if warranted.

(5) Considering the argument of the plaintiff and objection filed vide Exh.121 by the Defendant No.1. The above application is *bona fide* & tenable in the interest of justice and the same is liable to be partly allowed without going into the technicalities. Hence, I pass the following order.

:: ORDER ::

- (1) Application vide Exh.-118 is hereby partly allowed.
- (2) PW-1 resides Gurugram remain present either in person or through Court Commissioner, PW-2 resides at Bombay remain available through Court Commissioner and PW-3 resides at London remain available through Video Conferencing for cross examinations of plaintiff's witnesses be conducted.
- (3) No Order as to costs.

Order pass on today i.e. 15th June - 2026.

Date : 15.06.2026.
Place: Bharuch.

(A. S. Gohel)
Principal Sr. Civil Judge,
[**Code No. GJ01154**]
Bharuch.