

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1306 OF 2015

Gulshan Sadruddin Vishram and anr. .. Petitioners
vs.
Gulshan Allauddin Vishram .. Respondent

Ms M.V. Thakkar i/b Mr. R.V. Thakkar for the Petitioners.
Mr. Archit Jayakar a/w. Ms Trupti Khadse i/b Jayakar & Partners for
the Respondent.

CORAM : M. S. SONAK, J.
DATE : 28 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the order dated 18 July 2014,
allowing the respondent's application at Exhibit-42 for leading
secondary evidence.

3] The only reasoning, that is contained in the impugned order is
to be found in paragraph '11', which reads thus:

11. Heard both the Ld. Advocates of the both sides. Though there appears no documentary evidence to show that owner and landlord of the premises has denied to produce the original register, however, cross-examination is yet to be commenced. Therefore, defendant has every right to cross examine the plaintiff on these points.

4] Section 65 of the Indian Evidence Act, 1872 (said Act) provides the circumstance in which secondary evidence may be given of the existence, condition or contents of a document. There is absolutely no discussion, in the impugned order, on whether or not the predicates of Section 65 of the said Act have been satisfied. On this short ground, the impugned order dated 18 July 2014 is required to be set aside and is hereby set aside.

5] The Trial Court is directed to once again consider the respondent's application at Exhibit-42, in accordance with law, including in particular by reference to the provisions contained in Section 65 of the said Act. The application shall be disposed of, as expeditiously as possible and in any case within a period of six weeks from the date of production of an authenticated copy of this order.

6] It is made clear that this Court has not examined whether or not any case has been made out for leave to lead/produce secondary evidence. Accordingly, all contentions of all parties in this regard, are kept specifically open.

7] Parties to appear before the Trial Court on 6 August 2015 at 11.00 a.m. and produce an authenticated copy of this order.

8] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

dinesh