

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2209 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 made below Exhibit-41 taken out by the respondent seeking leave to file additional affidavit of evidence in respect of the documents which were obtained under the Right to Information Act, 2005 (RTI Act).

3] The learned counsel for the petitioners submitted that once the issues are framed, there is no provision for permitting production of any additional documents. Further, in any case, there is no provision for permitting production of xerox copies of the documents. The learned counsel for the petitioners further submitted

that it is extremely doubtful as to whether or not the documents, on basis of which leave is applied for to file an additional affidavit of evidence, are at all documents obtained under the RTI Act. In this regard, learned counsel for the petitioners pointed out that the documents appear to have been issued on 12 February 2014, which is incidentally the same date on which the same were applied for under the RTI Act. Further, none of the documents themselves bear any endorsement that the same have been issued under the provisions of RTI Act. All these circumstances, render it extremely improbable that such documents were at all issued under the provisions of RTI Act. Learned counsel for the petitioners submitted that there are no pleadings in the plaint that there was any manipulation in the matter of such documents and in the absence of any pleadings, there is no question of leading any evidence in such matters. The learned counsel for the petitioners relied upon the decision of the Apex Court in case of *Kalyan Singh Chouhan vs. C.P. Joshi*¹, to contend that no amount of evidence, which is not backed by any pleadings can at all be looked into, even if any permission is granted to lead the same.

1 (2011) 11 SCC 786

4] The learned counsel for the petitioners further submitted that it is the duty of every party to lead primary evidence, only if primary evidence is not available, then leave can be granted to lead secondary evidence. In the present case, since the documents emanate from the custody of BEST, it is always possible for the respondent-plaintiff to summon the officials in whose legal custody such documents are alleged to exist to produce the same. If this is done, the learned counsel for the petitioners contends that the petitioners will have sufficient opportunity to cross-examine such officials.

5] Having heard the submissions made by the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned order. In the first place, all that the impugned order has made is to permit the respondent to file an additional affidavit of evidence, though in the context of certain documents, which the respondent claims that he has obtained under the provisions of RTI Act. The Trial Court has rightly observed that such documents were not in possession of the respondent, at the time when the first affidavit in lieu of examination-in-chief was filed. Further, admittedly, the cross-examination has not commenced.

In these circumstances, if the Trial Court, in its discretion has permitted the filing of an additional affidavit, it cannot be said that the Trial Court has committed any jurisdictional error, as if sought to be made out.

6] That apart, the respondent has placed on record the application made under the RTI Act and also response from the Assistant Administrative Manager, Customer Care (A) Ward, who is incidentally the Public Information Officer of the BEST (PIO) for the purposes of RTI Act. The response which is dated 12 February 2014, very categorically makes reference to the documents which the respondent had applied for, in the application dated 12 February 2014. The circumstance that the PIO of the BEST has acted with utmost despatch, is certainly not a ground to criticize the PIO or to suspect genuineness of the communication dated 12 February 2014. The learned counsel for the petitioners may be right in her submission that such type of efficiency is rare. However, if once in a while such efficiency is exhibited, there is no reason to doubt the *bona fides* of the PIO.

7] The documents, in the context of which the additional affidavit is permitted to be filed, basically relates to the application in prescribed form seeking transfer of meter and some correspondence in that regard. There is also an electricity bill for the period between 14 November 2006 and 15 January 2007. The learned counsel for the petitioners disputes the veracity of such documents. However, it does appear that such dispute is merely an attempt to avoid such documents forming a part of the record. In any case, once the affidavit in lieu of examination-in-chief is filed, the petitioners will have ample opportunity to cross-examine the witness, *inter alia*, in the context of the documents and in this sense, no reasonable opportunity will be denied to the petitioners. Further, it must be remembered that merely because the documents are permitted to be appended to the affidavit in lieu of examination-in-chief or for that matter even marked, the same does not amount to proof of its contents. If the matter is considered from this perspective, then this is not a case where any prejudice as such can be said to have occasioned to the petitioners.

8] Ultimately, it has to be remembered, the procedure is only handmaid of the justice and not is mistress. The resistance in the

matter of admission of documents or evidence has to be on the touch stone of prejudice. The approach cannot be that because some documents may prove to be inconvenient, every attempt should be made to resist its production. The litigation is not a game of Chess. Rather, litigation is an attempt to discover where the truth lies. Parties are expected to cooperate in this endeavour and the approach should not be to create unjustified road blocks at every junction. The extra ordinary jurisdiction of this Court cannot be invoked for such purposes.

9] Accordingly, this petition is dismissed. Rule is discharged.

10] However, the Trial Court is directed to dispose of L.E. Suit No.68/81 of 2008, as expeditiously as possible and in any case within a period of one year from the date of production of an authenticated copy of this order. For this purpose, the parties are directed to appear before the Trial Court on 6 August 2015 at 11.00 a.m. alongwith an authenticated copy of this order.

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

(M. S. SONAK, J.)