

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (LODG.) NO. 1627 OF 2015

Shri Pochetti Rajayya Ambati & Anr. .. Petitioners
Vs.
Shri Shankar Y. Andhe .. Respondent

Mr.Ranvir S. Shekhawat i/b Raj Legal for petitioners.

Mr.Tushar V. Dahibawkar for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 18TH FEBRUARY, 2015**

P.C.

1 Rule. By consent of the parties, rule made returnable forthwith.

2 The petitioners have filed R.A.E. Suit No.373 of 2001 against the respondent for eviction on the ground of non-user, bonafde requirement of the suit premises and subletting under Maharashtra Rent Control Act, 1999.

3 The affidavit in lieu of examination-in-chief of the plaintiff was filed on 25th February 2014 and on 14th August 2014 and 2nd September 2014, cross-examination of the defendant's witness was also completed. On 23rd September 2014, the petitioners filed an application for leading additional evidence. This application was rejected by the trial court on 18th November 2014. Being aggrieved by the said order, the petitioners have approached

this Court by way of this writ petition. The additional evidence that the petitioners wanted to lead was to call a BEST employee as witness for proving the documents obtained under Right to Information Act on 11th October 2011 and 28th January 2014 for giving necessary evidence.

4 In the plaint, the plaintiffs had stated that the defendant's family members are not staying in the suit premises from 2004 and shifted to 9th Lane, Kamathipura, Mumbai (own premises). In the examination-in-chief, the plaintiffs/petitioners' witness has stated that the defendant and his family members have shifted to building no.3, room no.5 and room no.6, 2nd floor, 9th Lane, Kamathipura, Mumbai and are staying there from the year 2004. The plaintiff in his cross-examination also stated that he has documents to that effect but has not produced.

5 In the cross-examination, the defendant's witness was confronted with four documents issued by BEST under Right to Information Act. The four documents are :(i) application for transfer of meter submitted by the respondent-defendant; (ii) electricity bill in the name of the respondent-defendant; (iii) receipt of amount paid for transfer of the electric meter & (iv) the rent receipt issued in favour of the respondent-defendant for the own premises which were submitted with the application for transfer of the

meter. When the respondent was confronted, the witness admitted the said documents. However, the Court did not exhibit the documents because they were only photocopies and the witness was not the author of these documents.

6 In my view, the Court had gone wrong at this stage itself. The documents that the witness was confronted with were not photocopies but the certified copies issued under Right to Information Act 2005 and the defendants' witness also admitted the documents. Therefore, said documents should have been received in evidence by the trial court. In any event, the documents which the petitioner wanted to produce by way of additional evidence also go to the root of the matter. I have read a copy of the application filed by the petitioners. The Court at least should have permitted the petitioners to lead further evidence because the documents which the petitioners wanted to be received in evidence are very material for the petitioners' case.

7 In the circumstances, the impugned order is set aside and the trial court is directed to receive the documents issued by the BEST under Right to Information Act on 28th July 2014 in evidence and mark them as exhibits.

8 The writ petition stands disposed.

9 Even though the petition is disposed, the petitioners are directed to have the office objections, if any, removed and have the petition numbered.

(K.R. SHRIRAM, J.)