

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3229 OF 2015

Virendra Chunnilal Doshi and Anr.] ... Petitioners

Versus

Jayesh Chunnilal Doshi and Anr.] ... Respondents

Mr. Uday P. Warunjikar i/b Mr. N. V. Bhutekar for Petitioners.
Mr. Satyan N. Vaishnav a/w Ms. Nupur J. Mukherjee & Mr. Anil Chouhan i/b M/s. N. N. Vaishnava & Co. for Respondent No.1.

CORAM :- M. S. SONAK, J.

DATE :- APRIL 06, 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 number of Orders, which have the effect of not permitting the Petitioners i.e. original Plaintiffs from producing and exhibiting certain documents on record. By Order dated 25/10/2013, the Petitioners were permitted to produce and exhibit certain documents. It was clarified that insofar as balance documents are concerned, the Plaintiffs are at liberty to prove the same by adopting due procedure. To the same effect are further Orders made on 27/11/2013 and 07/02/2014.

3. The Petitioners-Plaintiffs, by application dated 05/11/2014 (Ex.210), applied for production of around 23 documents, stating that most of them have been either signed by them or on the ground that the Plaintiffs are able to identify the signatures of their makers. By Order dated 22/11/2014, the learned Civil Judge has dismissed the application at Ex.210. The review against the same was dismissed on 21/02/2015. Accordingly, the Petitioners challenge not only the Orders dated 22/11/2014 and 21/02/2015, but also the previous orders, to the extent they do not permit the Petitioners-Plaintiffs to produce and exhibit the entire set of documents including in particular the document referred to in the application at Ex.210.

4. Mr. S. N. Vaishnav, learned Counsel for Respondent No.1, submitted that there is no reason to interfere with the impugned order, inasmuch as, the Plaintiffs have not been deprived of opportunity to prove documents in question by adoption of the procedure prescribed by law. Further, even insofar as the documents referred to in Ex.210 are concerned, the learned Counsel pointed out that most of the documents do not bear signatures of the Plaintiffs and in any case, even the documents which bear the the signatures of the Plaintiffs, cannot be produced or exhibited in the absence of any statement forthcoming from the Plaintiffs that they admit the contents of such documents as being true and correct.

5. Having perused the impugned order as well as the record, there is no reason to interfere with the impugned orders, except

perhaps to the extent they decline production and exhibition of certain documents, to which reference shall be made hereinafter.

6. In the present petition, we are only concerned with the documents referred to in the application at Ex.210. The documents at Sr.Nos.3, 4, 9, 10 and 11 are concerned, the same bear the signature of the Plaintiff No.1. The Respondent No.1, in his reply dated 07/11/2014 to Ex.210, has objected to the exhibition of such documents on record by stating that *“there is no sufficient evidence to prove the documents or contents thereof”*. There is no denial that the said documents do bear the signatures of the Plaintiffs. The impugned orders, also, do not advert to this aspect. The rejection of leave to exhibit the said documents is on the sole ground that the Orders previously made in the matter of production and exhibition, were not challenged by the Petitioners-Plaintiffs. In these circumstances, exhibition of the documents at Sr.Nos.3, 4, 9, 10 and 11 can be permitted, with the rider that mere exhibition of such documents is not to be regarded as the proof of its contents.

7. Insofar as documents at Sr.Nos.22 and 23 are concerned, one is the certified copy of the plaint and the other is an Affidavit in lieu of evidence. There is no dispute that the said documents are already part of the record and further considering the nature of the documents, there can be no objection with regard to exhibition of the same.

8. Insofar as the remaining documents are concerned, there is no reason to interfere with the impugned order, which merely provides that such documents may be proved by the Petitioners in accordance with law. In fact, opportunity has been afforded to the Petitioners to prove the said documents as per the procedure prescribed by law.

9. Accordingly, the impugned orders are not interfered with, except to the extent indicated hereinabove. The documents at Sr.Nos. 3, 4, 9, 10 and 11 in Ex.210 are permitted to be produced and exhibited on record, subject to the rider that mere exhibition thereof is not to be construed as proof of its contents.

10. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

11. In the light of the Order made today, the Petitioners-Plaintiffs are at liberty to file additional Affidavit in lieu of examination-in-chief within a period of 10 (Ten) days from today. This is because the suit has already been expedited and the learned Civil Judge is required to complete the same by the end of May 2015.

12. All parties, including in particular the Petitioners-Plaintiffs, to co-operate in the matter of expeditious disposal of the suit, so that the directions of the Hon'ble Apex Court are complied with.

(M. S. SONAK, J.)