

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8751 OF 2011

M/s. R. R. A. Enterprises .. Petitioner.
V/s.
Shaikh Zaffer Jehangir
(since deceased) through L. R. -
Zarina J. Shahikh & Others .. Respondents.

Mr. Ruturaj Pawar i/b. Mr. S. S. Patwardhan for the Petitioner.
Mr. Pradeep Mandlik i/b. Mr. P. S. Dani, for Respondent No.1(a).

CORAM: G.S.KULKARNI,J.

DATE : 26th FEBRUARY, 2015.

PC:-

Respondent No.1-A (Org. Defendant No.1-A) filed an application below Exh. 135, praying for taking on record of the suit certain documents which are referred to by Respondent No.1-A in the affidavit in lieu of examination-in-chief and that the same be exhibited in view of the contents of paragraphs 17 to 20 of the affidavit of examination-in-chief filed on behalf of the Respondent No.1-A. It was the case of Respondent No.1-A in the application that though specific averments were made in respect of certain documents mentioned in paragraphs 17 to 20 of the affidavit filed on behalf of Respondent No.1-A, these documents inadvertently remained to be filed by the Advocate of Respondent No.1-A. It is submitted that these documents are specifically pleaded in the affidavit of evidence, and, therefore, may be taken on record. Petitioner/ Plaintiff opposed the application on the ground that

there are no reasons for late production of these documents. That the suit was part-heard and the documents are filed after the span of 15 years and prayed that the application be rejected.

2 The impugned order passed by the learned Trial Judge reads thus :-

“ Heard the counsel for parties. Reference regarding these document is there in the affidavit. No prejudice would be caused by giving exhibits to the original document. The cross examination of Deft. is not to be completed. In the interest of justice application stands allow.”

3 The learned Counsel appearing for the Petitioner has submitted that Respondent No.1-A had produced the documents after about 15 years and thus it was not permissible for Respondent No.1-A to make belated attempt to place on record the documents in question and that recording of the evidence had already commenced and, therefore, the learned Judge ought not to have passed the impugned order. On the other hand, learned Counsel appearing for Respondent No.1-A supports the impugned order passed by the Trial Judge.

4 I have considered the rival submissions made on behalf of the respective parties. It is clear that the application of Respondent No.1-A was to the effect that certain documents on which evidence has been led on behalf of Respondent No.1-A in the affidavit of evidence and more particularly in paragraphs 17 to 20 inadvertently remained to be filed on the part of the Advocate representing Respondent No.1-A. It is peculiar that the Petitioner had no objection to the admissibility of these documents in evidence as also does not dispute that these documents are

referred in the affidavit of evidence. The only objection is for taking the documents on record and exhibiting the same. It is not the case of the Petitioner that these documents are not proved by Respondent No.1-A so that the Court should not exhibit them. Admittedly, Respondent No.1-A would subject himself to a cross examination by the Petitioner/ Plaintiff in regard to all the contention of the affidavit of evidence and the documents so relied upon by Respondent No.1-A. It was, therefore, not open for the Petitioner to raise such an objection.

5 The contention of the Petitioner that there is a delay of about 15 years to bring these documents on the record of the Trial Court is also not correct for the reason that the affidavit of evidence has been filed on behalf of Respondent No.1-A on 21st October, 2010 and the application to produce these documents in support of the affidavit of evidence came to be filed within a short time i.e. 21st October, 2011.

6 Moreover, it is a specific case of Respondent No.1-A in paragraph 17 of the affidavit of evidence that in regard to original document at Exh. 62 – Petitioner/ Plaintiff during pendency of the suit and before the commencement of the oral evidence have illegally made interpolation on the said document with an attempt to create false evidence. When such was a specific case of Respondent No.1-A to the examination-in-chief and there being no dispute in regard to its original documents existing and proved there was nothing improper in the said document not being exhibited when Petitioner/Plaintiff would have all the opportunity to cross examine Respondent No.1-A in that regard. Thus, the contention on the part of the Petitioner/Plaintiff that there was a delay of about 15 years to bring the documents on record by Respondent No.1-A,

is ex-facie and misconceived and deserves to be rejected.

7 In the light of the aforesaid observations and taking into consideration the application filed on behalf of Respondent No.1-A and the impugned order, I do not find that there is any illegality or perversity in the learned Trial Judge passing impugned order which would warrant any interference of this Court in its jurisdiction under Article 227 of the Constitution of India.

8 **Writ Petition** is devoid of merits and stands summarily **rejected**. No order as to costs.

(G.S.KULKARNI,J.)