

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11690 OF 2014**

Shaikh Mukhtar Ahmed Dawood

..Petitioner

Vs.

Mangalbai Ganeshbahai Patel & Ors.

..Respondents

**Mr. Rajesh Singh i/b Dinesh Tiwari & Associates for the Petitioner
Mr. Rakesh Agarwal for the Respondent Nos.1 and 2**

**CORAM : R. M. SAVANT, J.
DATE : 9th SEPTEMBER, 2015**

P.C.

1 The order dated 7-8-2014 passed by the Learned Judge of the City Civil Court, Mumbai endorsed on the application filed on behalf of the Plaintiffs which is annexed to the Writ paper book at page 12 is taken exception to by way of the above Petition.

2 By the said order, the Plaintiffs have been allowed to lead secondary evidence of the documents at item Nos.2, 3, 11 and 23 in the compilation of the documents. It is required to be noted that the said application is a handwritten application bereft of any particulars. The impugned order reads thus “ read application and affidavit allowed to lead secondary evidence”. Hence the said order is a non speaking order which does not set out the reasons as to why the Plaintiffs are permitted to lead secondary evidence.

3 It is well settled that the secondary evidence can be allowed to be lead only if the conditions mentioned in Section 65 of the Evidence Act are satisfied. In the instant case, as indicated above, the application is a handwritten application which has not even been numbered and which is bereft of any reasons as to why the Plaintiffs desired to lead secondary evidence and why they should be permitted to lead secondary evidence. In my view, the impugned order dated 7-8-2015 is therefore required to be quashed and set aside and is accordingly quashed and set aside. The Plaintiffs would be at liberty to file a proper application that is a Notice of Motion for being permitted to lead secondary evidence setting out the grounds therein which are germane to Section 65 of the Evidence Act. If any such application is filed, needless to state that the same would be considered on its own merits and in accordance with law.

4 It would be open for the Petitioner to apply for setting aside of the order dated 29-8-2015 closing his evidence in the light of the order that has been passed in the instant Petition.

5 With the aforesaid observations, the Writ Petition is disposed of.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order