

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1148 OF 2016

1. Mr. Manguesh Rajaram Wagle,
(Orig. plaintiff no.2a.)
2. Mrs. Smita Manguesh Wagle,
(Orig. plaintiff No.2b.)
Both major,
both residents of near 'Mahalaximi Temple'
Dada Vaidya Road,
Panaji Goa. Petitioners

V e r s u s

1. Mr. Suresh D. Naik,
Major,
C/o 'Hotel Republica',
Opp. Secretariat,
Panaji.
2. Mr. Abdul Razak [since deceased]
C/o Hotel Republica,
Opposite old Secretariat,
Panaji.

2(i) Mrs. Sayeeda Abdul Razak,
major,
widow,

2(ii) Mr. Mohammed Anif,
Major,
Son,

2(iii) Miss Amira Abdul Razak,
Major,
Daughter,

2(iv) Mrs. Farha Abdul Razak,

Major,
Daughter,
2(v) Mr. Matheen I. Sait,
Major,
Son-in-law,

2(vi) Mrs. Sadia Abdul Razak,
Major,
Daughter,

2(vii) Mr. Ajaz Ahmed,
major,
Son-in-law,
All residents of 'Mubarak Manzil',
Opposite Electricity Department Quarters,
Aquem, Margao Goa. [original Defendants]

3. Mrs. Suman Anand Naik Kurade,
(Orig. plaintiff no.2c)
Major
Daughter,
4. Dr. Anand G. Naik Kurade,
(Orig. plaintiff No.2d)
Major,
Son-in-law,
Both residents of near Sangam Sagar -B-168,
East Kailash,
New Delhi,
5. Mrs. Sharad Suresh Shirwaikar,
(Orig. plaintiff No.2e)
Major,
Daughter,
6. Mr. Suresh W. Shirwaikar,
(Orig. plaintiff No.2f)
Major,
Son-in-law,
Both residents of Shraddha,
Aquem Alto, Margao Goa,

7. Dr. (Mrs.) Sheela G. Laud,
(Orig. plaintiff no.2g)
Major,
Daughter,
8. Dr. Ganan W. Laud,
(Orig. plaintiff No.2h)
major,
Son-in-law,
Both residents of 123,
Shrub Hollow Road,
Hamilton Park,
New York 11576,
U.S.A.
9. Mrs. Rekha S. Talwadkar,
(Orig. plaintiff No.2i)
Major,
Daughter,
10. Mr. Satish S. Talwadkar,
(Orig. plaintiff no.2j)
Major,
Son-in-law,
Both r/o Adhkrishna building,
1st Floor, St. Inez, Panaji.
11. Mrs. Alha D. Sardesai,
(Orig. plaintiff No.2k.)
Major,
Daughter,
12. Mr. Digambar B. Sardesai,
(Orig. plaintiff no.2l)
Major,
Son-in-law,
Both residents of A-101,
Suman Apartments,
Lokhandwala Complex,
Andheri (West),
Mumbai – 400 053.

..... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for the petitioners.

Mrs. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for the respondent nos. 2(i) to 2(vii).

Coram:- F. M. REIS, J.

Date:- 8th December, 2016

ORAL JUDGMENT

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioners and Mrs. A. Agni, learned Senior Counsel appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel.
3. The learned counsel appearing for the respondents waives service.
4. The challenge in the above petition is to the order dated 12.10.2016 whereby an application for leave to produce documents under Order VII Rule 14(3) of the Civil Procedure Code came to be dismissed.

5. Briefly, the facts of the case relevant for the purpose of deciding the above petition are that the petitioners filed a suit in the Court of the learned Civil Judge Junior Division, Panaji, on the ground that they are tenants in possession of a compartment forming part of the building known as “Yasin Manzil” situated at St. Inez, Panaji and located in the property surveyed under Chalta No.126 of P.T. Sheet No. 66 of the City of Panaji and that the original defendant no.2 in collusion with the original defendant no.1 who is the respondent no.1 herein obstructed their entry and started using the said premises which were in possession and occupation of the petitioners. It is contended by the respondents in the written statement that the possession of the suit premises was surrendered by the original tenant Rajaram Wagle prior to his death which occurred in the year 1981 and that somewhere in the year 1990 the said premises were given to the respondent no.1 who was running liquor business therein under a licence obtained from the Excise Department bearing nos.129/92 and 63/92. It is further contended by the petitioners that there is a dispute as to which premises the application for excise licence was made and to which premises such licences were issued. It is further contended by the petitioners that in the course of the evidence of the respondents, some documents forming part of the two files from the Excise Department were produced. It is the contention of the petitioners that the respondents have deliberately and

mischievously suppressed some of the documents which are part of the records from such files. It was also their contention that there was some manipulation which have taken place in the records of the Excise Department. The petitioners led their evidence and were given liberty to lead evidence in rebuttal. The evidence was thereafter led on behalf of the respondents before the learned Trial Judge. It is further the contention of the petitioners that on 01.07.2015 while availing the opportunity to lead evidence in rebuttal, the petitioners made an application for seeking direction from the learned Trial Court to produce the entire files pertaining to the grant of the said two licences. The application was opposed by the respondents/defendants by filing a reply and by order dated 10.07.2015 the learned Trial Judge rejected the said application. Aggrieved by the said order, the petitioners preferred a Writ Petition before this Court being Writ Petition No 562 of 2015 which came to be disposed of by making certain observations while rejecting the said Writ Petition. Thereafter, on 01.08.2015 the petitioners filed another application for leave to produce the documents namely the certified copies of the two files in its entirety which they had obtained from the office of the Excise Department firstly in the year 2006 and thereafter in July, 2015. It was further the contention of the petitioners as set out in the said application that the production of the certified copy was required as it was contended that the falsity of the stand

of the respondents that the excise licences are pertaining to the subject premises would be exposed. It was also stated in the said application that in the cross examination of DW1, after initially agreeing to produce the entire set of papers which DW1 had obtained under the Right to Information Act, DW1 had avoided to produce the full file on false ground. It was also contended that this material would also be required to examine whether there was any manipulation in the records as alleged by the petitioners. The application was opposed by the respondents and ultimately the learned Judge by an order dated 31.08.2015 rejected the said application filed by the petitioners. Being aggrieved by the said order, the petitioners preferred a Writ Petition No.715 of 2015 which came to be dismissed by order dated 30.10.2015. The petitioners thereafter filed an application dated 04.11.2015 for production of documents under Order 11 Rule 14 of the Civil Procedure Code. By the said application, the petitioners sought leave to rely upon the certified copy of the plaint, written statement, additional written statement along with the issues framed in suit being Regular Civil Suit No.577/2000. The said suit was filed by the respondents no.2(iii), (iv) and (vi) seeking for permanent injunction to restrain the respondents from interfering with their possession of the very same premises which was the subject matter of Regular Civil Suit No.279/2000. It was further contended that in the said suit in the alternative, the respondents have also sought for restoration of

possession from the petitioners who are the defendant nos. 1 and 2 in such suit. The said suit came to be withdrawn on 06.01.2009 by the plaintiffs therein unconditionally. The application for production of such document was also opposed by the respondents vide their reply dated 20.11.2015 and by order dated 04.12.2015 the application came to be rejected. Writ Petition was also filed challenging the said order. Thereafter, the petitioners on 24.11.2015 filed an application under Order 14 Rule 3 read with Section 151 of the Civil Procedure Code which also came to be dismissed by order dated 03.02.2016. Three separate writ petitions were filed challenging the said order and by a common order dated 16.09.2016, all the three writ petitions came to be rejected.

6. By an application dated 23.09.2016 the petitioners sought leave of the Court to produce the complaint lodged to the Commissioner of Excise and the report of the Superintendent on such Department. A reply was filed by the respondents opposing the said application and by order dated 12.10.2016 the learned Trial Judge rejected the said application. Being aggrieved by the said order, the petitioners have preferred the present Writ Petition.

7. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the

petitioners has pointed out that the suit filed by the petitioners is on the ground that they were tenants in the disputed premises and that they have been forcefully evicted by the respondents. It is further contended that in the suit the petitioners had filed an application for temporary injunction which came to be allowed and the petitioners were put in possession of the subject premises which order came to be upheld by the Apex Court. The learned Senior Counsel further pointed out that in the reply/written statement filed by the respondents, the respondents were relying upon some alleged excise licences granted in the year 1993 which were after the filing of the suit though it was the case of the petitioners that such licences were not in respect of the subject premises. The learned Senior Counsel further submits that at the time of closing the evidence of the petitioners the right to lead rebuttal evidence was reserved by the petitioners on issues no. 3 and 4. It is further submitted that during the course of the evidence and after the evidence of DW1, the respondents examined an official from the Excise Department who brought some documents and the petitioners thereafter learnt about some documents which according to him were fabricated and manipulated are also tampered to suit the defence of the respondents. The learned Senior Counsel further points out that an application was filed to direct the official from the Excise Department to produce both the files pertaining to the alleged licences but however, this application was opposed

by the respondents which came to be dismissed. In Writ Petition which was filed challenging the said order before this Court, this Court took a view that directing the production of the files at that stage was not at all required as the petitioners could produce certified copies of the relevant documents and it was also observed that after such exercise is carried out the learned Trial Court can if required call for the records from the Excise Department. It is further pointed out that thereafter the petitioners produced part of the records from such files which was opposed by the respondents and such application came to be dismissed by the learned Judge on the ground that such documents were not relevant for the purpose of deciding the matter in controversy. A challenge to the said order before this Court did not yield any result, as such petition came to be rejected. Thereafter, the petitioners filed another application to produce some pleadings and other material which according to the petitioners would support the stand taken by the petitioners. But however, the said application also came to be rejected. The application to direct the production of the documents essentially from the records of the Excise Department was also opposed by the respondents which ultimately led to the dismissal of such application. Writ Petition filed before this Court challenging the said orders was dismissed by the order dated 30.10.2015. The learned Senior Counsel further submits that in the meanwhile the petitioners had filed a complaint before the Excise

Department inter alia contending that there was fabrication/manipulation of records in the office of the Excise Department. The Excise Department according to the learned Senior Counsel directed an inquiry to be held with that regard and upon verification of all the relevant files, there was a report submitted by such official to the concerned Department which has directed further inquiry. The learned Senior Counsel further pointed out that as such report and the files would clearly expose the falsity and/or the manipulation of the documents sought to be relied upon by the respondents an application came to be filed for leave to produce such report and the notings on the files therein. The respondents opposed the said application essentially on the ground that such documents would be irrelevant for the purpose of deciding the matter in controversy as this issue has already been decided by this Court while deciding the earlier Writ Petitions. The learned Senior Counsel further submits that the report came to be submitted after the filing of the suit and the authenticity or veracity of such report was not disputed by the respondents and the only contention raised by the respondents is that in view of the earlier orders passed in the proceedings by the learned Trial Judge which were not interfered by this Court in its extra ordinary jurisdiction under Article 227 of the Constitution of India, the question of granting leave to produce such documents would not be justified. The learned Senior Counsel thereafter has taken me through the impugned order

to point out that the learned Judge has considered irrelevant consideration while disposing of the said application and failed to note that the notings and the report would at least prima facie disclose that relying on the alleged documents by the respondents are in fact manipulated/fabricated. It is further pointed out that DW1 had suppressed the material before the Court by not producing all the records which were obtained under the Right to Information Act which according to him would itself justify the grant of leave to rely upon such documents.

8. On the other hand, Mrs. Agni, learned Senior Counsel appearing for the respondent nos. 2(i) to 2(vii) has vehemently argued that the application filed by the petitioners under consideration is an abuse of process of law and deserves to be rejected with exemplary costs. It is further pointed out that this Court has conclusively held that such documents are irrelevant for the purpose of deciding the matter in controversy and once the issue of relevancy of such documents stands concluded, the question of this Court reexamining the issue of relevancy in the present Writ Petition would not at all be justified. It is further pointed out that while disposing of the earlier Writ Petitions filed by the petitioners, this Court has taken a view that the documents which are allegedly referred to in the report are not at all necessary to decide the matter in controversy

nor are relevant to decide the issue in the suit. The learned Senior Counsel further pointed out that principles of res judicata are applicable at different stages of the proceedings and as such according to the learned Senior Counsel once this Court has taken a view in the earlier round of litigation that the documents were irrelevant for the purpose of deciding the matter in controversy, the present application would therefore be barred by principle of res judicata or principle analogous thereto. The learned Senior Counsel further submits that the endeavour of the petitioners is to get things done indirectly what cannot be done directly in view of the earlier orders passed by the learned Trial Judge and as such the petitioners are not justified to file the application for leave to produce such documents. The learned Senior Counsel further submits that interference of this Court in a Writ Petition under Article 227 of the Constitution of India are very restricted and unless and until there is a jurisdictional error committed by the Court below or there is an erroneous exercise of judicial discretion by the learned Trial Court, the question of exercising jurisdiction under Article 227 of the Constitution of India would not at all be justified. The learned Senior Counsel further submits that once this Court has taken a view that the documents are itself irrelevant for deciding the matter in controversy, it is not open for the petitioners to revive their request by filing the application under consideration which according to the learned Senior Counsel is an

abuse of the process of the Court. The learned Senior Counsel further points out that it is well settled that the successful applications for the same relief is not maintainable and as such the petitioners have chosen to file the present application to indirectly obtain a relief which was refused by this Court in the earlier Writ Petitions. The learned Senior Counsel has extensively gone through the judgments passed by this Court while disposing of the earlier Writ Petitions to point out that some of the arguments advanced by the learned Senior Counsel appearing for the petitioners are noted and ultimately were not accepted while disposing of the earlier Writ Petitions. The learned Senior Counsel as such submits that there is no reason for interference in the impugned order as considering the earlier orders passed by this Court, the question of granting any relief to the petitioners on such application would not at all be proper. In support of the said submission, the learned Senior Counsel has relied upon the judgments of the Apex Court reported in **(2010) 8 SCC 329** in the case of ***Shalini Shyam Shetty and another V/s Rajendra Shankar Patil***, **(2010) 9 SCC 385** in the case of ***Jai Singh and others V/s Municipal Corporation of Delhi and another***, **(2004) 12 SCC 713** in the case of ***Ram Chandra Singh V/s Savitri Devi and others*** and **(2013) 14 SCC 1** in the case of ***Bagai Construction V/s Gupta Building Material Store***. The learned Senior Counsel as such points out that the petition be accordingly rejected.

9. Upon hearing the learned Senior Counsel appearing for the petitioners and the respondents, the main issue which comes for determination is whether in view of the earlier orders passed by the learned Trial Judge, where no interference was found required by this Court would preclude the petitioners from filing an application for leave to rely on the subject report in connection with the some excise files. Whether the learned Judge was justified to pass the impugned order on the ground that as on the earlier occasion the documents which were sought to be produced in support of the contention of the petitioners were found to be irrelevant, would itself disentitle the petitioners to rely upon the report prepared by an officer appointed by the Excise Commissioner based on the complaint lodged by the respondents.

10. Before examining the rival contentions, it would be appropriate to note the object to amend Order VII Rule 14 of the Civil Procedure Code. Order VII Rule 14 of the CPC has been added by way of an amendment to the Civil Procedure Code in the year 2002. There was no provision in the Civil Procedure Code under which a plaintiff should not be allowed to produce further documents which were not earlier produced along with the plaint though leave of the Court was necessary for such production. The plaintiff had liberty to enter such document in the list of documents to be

relied upon by the plaintiff or as annexures to the plaint and in fact the plaintiff could rely upon all further documents subject to of course to the Rules relating to the inspection of the documents. In the present case, the document sought to be produced was in fact not available to the plaintiff when the suit was filed. As such, the question of producing such document which is a Report prepared at the instance of the Excise Department during the pendency of the suit definitely could not be produced at the time of the filing of the suit nor placed in the list of documents relied upon by the plaintiffs. As already pointed out herein above, the stage when the petitioners desired to produce such document was in the course of rebuttal evidence which was admittedly reserved for the plaintiffs. It is the contention of Mr. Lotlikar, learned Senior Counsel appearing for the petitioners that rebuttal evidence is essentially to disprove the evidence produced by the defendants. It is undisputed that in support of the case put forward by the respondents a plan from the Excise Department was produced and marked at Exhibit 82. There are other documents also produced from the Department which are at Exhibit 81. It is sought to be contended by the learned Senior Counsel appearing for the petitioners that the report prepared by the Commissioner of Excise after verifying all the records maintained in the office in connection with the subject licence would create a doubt on the said documents produced by the respondents.

Whether such report itself would create a doubt over the documents produced by the respondents is a matter which would have to be considered only after the authenticity and the contents of such report are duly established by the petitioners. The fact that the report deals with the documents produced and exhibited by the respondents and placed on record is not in dispute. The purpose of reserving rebuttal evidence as already pointed out herein above, is essentially to disprove and create a cloud on the evidence relied upon by the defendants. Apart from that, it is the contention of the learned Senior Counsel that the report also shows that there was suppression of documents based on the answers in the cross examination by DW1. All these aspects prima facie would go to suggest that the documents which are sought to be relied upon would fit in the case where the plaintiffs have reserved their right to lead rebuttal evidence. When questioned on this aspect, Mrs. Agni, learned Senior Counsel appearing for the respondents submits that though otherwise such material may come within the scope of rebuttal evidence at the instance of the plaintiffs nevertheless, considering that this Court has already taken a view that the documents sought to be produced by the petitioners were irrelevant for the purpose of deciding the matter in controversy, it is not open to the petitioners now to file an application to produce such report in support of their case.

11. This contention of Mrs. Agni, learned Senior Counsel appearing for the respondents basically is in the context that the principles of res judicata would be applicable to interlocutory orders even at different stages of the proceedings. The position with that regard is now well established. There are interlocutory orders which are passed during the pendency of the suit which would finally determine the substantive right of the parties. In this connection, an Order refusing leave to produce the document does not in any way impinge upon the legal rights of the parties to the litigation. They only regulate the procedure as far as the production of the documents are concerned. In this connection, the Apex Court in the Judgment reported in *(2015) 1 SCC 665* in the case of **Surjit Singh & Ors. vs. Gurwant Kaur & Ors.**, has noted the observations of its earlier Judgment by stating at paras 18 and 19 thus :

“18. Thereafter, the Court adverted to the applications which were filed in three suits for setting aside the ex parte orders passed against the appellant therein, and after deliberating the nature of the order, that is, one under Order 9 Rule 7 and the rejection thereof by the trial court and affirmance thereof by the High Court, the filing of the application under Order 9 Rule 13 and dismissal of the same on the ground of res judicata and concurrence thereof

by the High Court, the Court referred to the decision in *Satyadhyan Ghosal* and after reproducing a paragraph from the same, opined thus: (*Arjun Singh case*, AIR p. 1000, para 11)

“11. ... ‘8. ... Does this, however, mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?

* * *

16. It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order.’ (*Satyadhyan Ghosal case*, AIR pp. 944 & 946, paras 8 & 16)”

19. After so stating, the Court in *Arjun Singh case* observed that if the correctness of the order of the Civil Judge in disposing of the application under Order 9 Rule 7 filed by the appellant was questioned in an appeal against the decree in the suit, these principles and the observations would have immediate relevance. In that context, the three-Judge Bench proceeded to deal with various kinds of interlocutory orders and opined that certain orders that are interlocutory in nature are

capable of being altered or varied by the subsequent applications for the same relief, normally only on proof of new facts or new situations which subsequently emerge. The Court emphasised on the nature of the order and ruled that if it does not impinge upon the legal rights of parties to the litigation the principle of res judicata would not apply to the findings on which the order is passed. However, the Court observed that if applications were made for relief on the same basis after the same had once been disposed of, the court would be justified in rejecting the same as an abuse of the process of the court. Thereafter, the Court proceeded to state that the successive applications based on same set of facts, if they are interlocutory orders of different nature and are passed for preservation of property, do not in any manner decide the merit of the controversy in issue. They can be rejected on the ground of abuse of the process of the court but not by principle of res judicata. The said principle was followed in *United Provinces Electric Supply Co. Ltd. v. Workmen* and *S. Malla Reddy v. Future Builders Coop. Housing Society.*”

12. Taking note of the said observations, I find that the Order refusing leave to rely upon documents on the basis of the material on record does not in any way impinge the legal rights of the parties to the litigation.

13. In the present case, the documents which are sought to be produced as pointed out herein above, includes a report and the notings in the official files maintained by the Excise Department in the course of their official business. These were not documents which were available whilst passing the Orders on the earlier occasions. In such circumstances, the contention of Mrs. Agni, learned Senior Counsel appearing for the respondent that the application itself is barred by the principles of resjudicata and, in any event, on the ground that such application is an abuse of the process of Court, cannot be accepted. The documents sought to be produced as well as the grounds are different in the facts and circumstances of the case. Though the ultimate reason may, prima facie, be to dispute the genuineness of the evidence adduced by the respondents herein. It may not be overemphasized to note that no substantive right accrues to a party on the basis of procedural exigencies. Though in the reply filed by the respondents the correctness of the findings arrived at in the said report are seriously challenged, nevertheless, there is no allegation therein disputing the authenticity of such report or that it was fabricated by the petitioners. In

any event, the correctness or otherwise of such report are matters to be examined only after the contents of such documents are duly proved by the Petitioners, who seek to rely upon such documents in accordance with law. The truthfulness or otherwise of the allegations therein would have to be tested in the cross examination of the persons who seek to prove the contents of such report. No doubt, a report of an expert or of a Commissioner is not a conclusive piece of evidence to draw conclusions based on the findings therein as the truthfulness or otherwise of such findings as pointed out herein above would have to be examined only after the contents of such report are duly proved and substantiated.

14. In the Judgment reported in **1978 B.L.R. 695** in the case of ***Sharangdhar Purshottam Kanhere vs. Sitaram Mahadeo Dabholkar***, this Court whilst considering the purpose of Order 7, Rule 18 of the Civil Procedure Code as it then was held thus :

"We find in Order VII, Rule 18 of the Code, discretion is given to the Court to allow the production of such document with the leave of the Court and if the Court refuses the leave to produce subsequent to the presentation of the plaint, such document shall not be received in evidence on behalf of the plaintiff at the hearing of the suit. The object of Rules 14 and

18 is to provide against false documents being set up after the institution of a suit. In those cases, therefore, where there is no doubt of the existence of a document at the date of the suit, the Court should, as a general rule admit the document in evidence though it was not produced with the plaint or entered in the list of documents annexed to the plaint as required by Rule 14. But the Court even in certain cases may refuse to receive it in evidence if it is produced at a very late stage of the proceeding or the Court may allow the production of a document which ought to have been produced at the time of the presentation of the plaint on showing good reason or sufficient cause for non-production. Rule 18 of Order VII of the Code gives the discretion to the Court to allow the production of a document after the presentation of the plaint.”

15. Looking into the said observations, the parameters required to rely upon the documents at a later stage have been clearly laid down and would be relevant even after the amendment of 2002 to the Civil Procedure Code. What can be deduced thereby is that documents which may be seen to be got up or fabricated later based upon the defence set out by the defendant should not be allowed to be relied upon. In such circumstances,

the Court will normally not grant leave in cases where it suspected the document to have been fabricated later or to be false document set up after the institution of the suit. It is impossible to expect the Court not to allow a party to produce or rely upon documents which are prima facie truthful and may be required for determination of the controversy in the suit. The Court cannot brush aside the whole truth to be brought before it for the ultimate adjudication of the dispute at the final stage on merits. Leave of the Court is required not to avoid and shunt evidence being produced. Leave of the Court would be required to explain the Court how in a given case a document could not have been produced at the earlier stage. In such circumstances, the restrictions imposed in terms of the provisions of the Civil Procedure Code to produce additional documents is to avoid creation of fabricated documents to place the opposite party to a disadvantage but, however, in the present case, the documents which are sought to be produced are prepared by the Government Department of the Excise Commissioner and as pointed out herein above, there are no allegations by the respondents that such report has been fabricated by the officials of such Department. It appears that the report only discloses the position as found upon verification of the concerned file. Considering the fact that there is no allegation of bias or otherwise by the persons who prepared such report in the reply filed by the respondents, I find that it cannot be said at this stage

that the report and the document sought to be produced by the petitioners are manipulated or fabricated. As pointed out herein above, on going through the report, it only records the existing position of the concerned files in connection with the subject premises. The truthfulness of such allegations is a matter which would have to be examined by the learned Judge while appreciating the evidence on record. The learned Senior Counsel appearing for the respondents has pointed out that the relevancy of the documents has already been concluded in the earlier judgment passed by this Court. The fact remains that when the petitioners were precluded from relying upon the files from the Excise Department in connection with the excise licences relied upon by the respondents, this Court by an order dated 30.10.2015 while disposing of Writ Petition No. 715 of 2015 had taken a view that the petitioners should be allowed to produce only the certified copies of the relevant documents and it was open to the Court to thereafter examine the correctness or otherwise of the allegations advanced by the petitioners by calling for the original files from the Excise Department, if required. At the stage of granting leave to produce the documents, the Court has to examine essentially whether such documents are referable to the dispute in controversy. The report sought to be produced from the office of the Government Department is pertaining to the disputed excise licence relied by the respondents. The fact that such report

is produced to rebut the evidence adduced by the respondents cannot be disputed. In such circumstances, on perusal of the orders passed by this Court dismissing the earlier Writ Petitions filed by the petitioners, the view taken is that the document itself is irrelevant to decide the stand taken by the petitioners that no credence can be attached to the documents relied upon by the respondents. The learned Senior Counsel appearing for the respondents was unable to point out any specific finding in the earlier orders passed by this Court wherein a view was taken that the subject document produced by the petitioners are unreliable and cannot be relied upon or that such material cannot be in the realm of rebuttal evidence. In such circumstances, considering that the report prepared by the Department of the Government was only after the filing of the suit based on the complaint lodged by the respondents that the records of the Department are being manipulated, I find that merely granting leave to the petitioners would not by itself either prove the contents of such document. The petitioners would have to lead cogent and reliable evidence to prove such contents as well as the authenticity of such document in accordance with law. Needless to say that the respondents if so advised would be at liberty to lead further evidence in answer to any material or evidence produced by the petitioners. It is only at the stage of appreciating the evidence on record based on the entire material produced by the petitioners and the respondents that the

Court would have to take a view whether the document has any relevancy or whether the document has any evidential value. At this stage, as observed herein above, the Court restricts itself only to find out whether the document is referable to the dispute and whether such document is not patently fabricated by the petitioners to suit their illegal motive.

16. The judgment of the Apex Court relied upon by the learned Senior Counsel appearing for the respondents to point out the circumstances in which the interference of this Court is called for while exercising jurisdiction under Article 227 of the Constitution of India is well established. The discretion to be exercised while examining whether leave is to be granted to rely upon the documents during the course of the trial cannot be arbitrary or contrary to law nor cause injustice to the parties seeking such leave. When the discretion has been exercised erroneously and contrary to the well established principle of law and/or on irrelevant consideration, this Court can exercise jurisdiction to advance the cause of justice. Merely granting leave to the petitioners to produce the documents would not in any way defeat or impinge any substantive right, if any of the respondents who will get an opportunity to dispute the correctness or otherwise of such documents. But however, refusing leave would lead to consequences whereby the petitioners would be precluded from producing

the documents which they feel are material for advancing the case put forward in the pleadings. As already pointed out herein above, the correctness or otherwise of the report and the effect therefrom, on the documents produced by the respondents is a matter which the learned Trial Judge would have to examine while appreciating the evidence on record. The procedure of law is to facilitate the cause of justice. No vested right can be created based on the procedure. As such, the leaned Trial Judge while refusing leave to the petitioners to produce the documents would in fact cause grave prejudice to the case sought to be put forward by the petitioners. No doubt, as already pointed out herein above, at the time of granting leave to the party to rely upon the document it would not by itself establish the contents or authenticity thereof which such party would have to prove on its own merits. On perusal of the impugned order passed by the learned Trial Judge, I find that the learned Judge has considered the authenticity of the report. Though the contents of the report have yet to be proved. Unless the matter has reached such stage, merely on perusal of such report, it is not open for the Court to draw inferences to come to the conclusion that the report itself would not establish that the respondents were responsible to the discrepancy in question referred to in such report. For the aforesaid reasons, I am of the opinion that the learned Judge was not justified to pass the impugned order refusing leave to the petitioners to rely

upon the report and other documents while passing the impugned order. The petitioners are as such entitled for leave to rely upon the report and the documents referred to in the application subject to proving the contents, authenticity and the relevancy thereof in accordance with law. As already pointed out herein above, the respondents if so advised are at liberty to produce further evidence in reply or answer to any material produced by the petitioners. All contentions with that regard to the correctness, relevancy or otherwise of the report and the documents sought to be relied upon by the petitioners are left open. In this connection, the observations of this Court in the judgment reported in **2006(5) ALL MR 438** in the case of **Smt. Chitrakala Fal Dessai V/s Shri Balu Marathe alias Mane s/o Jyotiba Marathe**, at para 9 would be relevant which read thus :

“9. It is pertinent to note that Rule 2 of Order 13 requiring good cause to be shown has now been deleted and by amendment sub-rule (3) is added to Order 14 which states that leave of the Court has to be obtained for production of such documents. But even accepting that while persuading the Court to grant leave, a party has to show cause why the documents could not be produced earlier, not a very strict, restricted and pedantic view can be taken of this provision. Ultimately the Court will have to ensure that all documents which assist it to resolve the

controversy before it in an efficient manner are available for its perusal. Unless the Court comes to a conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the Court should not generally deny leave to produce documents because ultimately it is always open to the other side to cross-examine the party who produces the documents to establish that the said documents are not relevant or that the case based on the said documents is not true. In my opinion in this case, at this stage, it is not possible to come to a conclusion that the documents at serial Nos. (f) and (j) are manufactured. However, that does not preclude the defendant, if he so desires, to cross-examine the plaintiff and persuade the Court to hold so. In the nature of things, no final opinion can be expressed by this Court on this aspect of the matter, at this stage.”

17. In view of the above and for the aforesaid reasons, the impugned order dated 12.10.2016 is quashed and set aside. The petitioners are granted leave to rely upon the said documents as mentioned in the

application dated 23.09.2016 in the light of the observations made herein above and in accordance with law. Rule is made absolute in the above terms.

F. M. REIS, J.

at*