

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 277 OF 2016

Mrs. Rekha Rajaram Desai

.....Petitioner

V/s.

Venkatesh Nagari Sahakari Pat Sanstha
Sangli and another

....Respondents

Mr. Kuldeep U. Nikam Advocate for Petitioner.

Mr. Anilkumar Patil Advocate for Respondent no. 1

Mrs. A. A. Mane APP for the State.

CORAM : RAVINDRA V. GHUGE, J.

DATED : JULY 4, 2016.

PC :

- 1) Heard respective counsel.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) The petitioner is aggrieved by the order dated 24/11/2015 passed by the learned Jt. Civil Judge Junior Division, Sangli below Exhibit 27 in S.C.C. No. 1420 of 2007.
- 4) The learned counsel for the petitioner has strenuously criticized the impugned order. The contention is that sub section (c) to section 65 of the Indian Evidence Act as is invoked by the Respondent for the purpose of leading secondary evidence, is not attracted.

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5) The grievance is that Application Exhibit 27 seeking leave to lead secondary evidence as the original cheque at issue is misplaced, lost and is not found though the same was placed in some cupboard for safe keeping. On these premises, application could not have been allowed by the impugned order since negligence or omission on the part of the concerned person which has led to the loss of the said document, would indicate that the said litigant has been negligent. As such, that cannot be a ground for leading secondary evidence. He therefore, prays that this petition be allowed and the impugned order be quashed and set aside.

6) The learned counsel for the Respondent has supported the impugned order.

7) I have considered the submissions of the learned Advocates.

8) Section 65 of the Indian Evidence Act reads as under:

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when,

after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence²;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

9) In the instant case, section 65 (c) has been invoked by the original applicant on the ground that the original cheque which was placed for safe keeping in a cupboard is not traceable and despite best efforts, cannot be found. In my view, though the application is not happily worded, the meaning that is sought to be conveyed to the Court by the applicant is that the said original cheque has been lost.

10) In the impugned order, the learned Court has appreciated that the original cheque was shown to the office of the Court at the time of the lodging of the complaint which is indicative of the fact that the cheque in original form was available on the said day. The learned Court has therefore concluded that no further time could be granted to the applicant/original complainant in a proceeding which is already 9 years old, as it would amount to unnecessarily prolonging the matter.

11) It is Trite Law that the Revisional Jurisdiction of this Court is limited and merely because a second view is possible, an interference in the impugned order is uncalled for. Unless the impugned order appears to be perverse and erroneous and is likely to cause grave injustice to a litigant, no interference is called for.

- 12) In my view, considering application Exhibit 27, the meaning sought to be conveyed to the court is that the original cheque is lost despite the efforts put in by the applicant to search for it.
- 13) As such, I do not find that the impugned order could be termed as being perverse and erroneous so as to cause an interference in the Revisional Jurisdiction of this Court.
- 14) Writ petition being devoid of merits, is therefore dismissed.
- 15) Rule is discharged.

(RAVINDRA V. GHUGE, J.)