

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 7498 OF 2016

Bharat Petroleum Corpn. Ltd.,
Ballard Estatem Mumbai – 38. ... Petitioner
v/s
Akhtar Hasan Rizvi,
7A, S.V.Road, Bandra (W), Mumbai – 50. ... Respondent

Mr.S.R.Page for the petitioner.

Mr.Prakash Lad along with Mahesh Mishra i/by Ravi Thankaian for
the respondent.

Coram: N.M. Jamdar, J.

Dated: 19 September 2016

ORAL ORDER:

The Petitioner, Defendant in the suit, has challenged the order passed by the learned City Civil Court, Mumbai, dated 2 November 2015, allowing the chamber summons taken out by the Respondent/Plaintiff, to lead secondary evidence of the documents.

2 Heard learned counsel for the parties.

3 Learned counsel for the Petitioner submitted that the affidavit has been filed by the Plaintiff through a Constituted Attorney and,

therefore, he is not competent to depose regarding the non-availability of the documents. This submission has been rightly rejected by the learned City Civil Court Judge by holding that the Constituted Attorney has deposed that he is working for the Respondent/Plaintiff since the year 1989 and he is aware of the transaction. Once this statement on oath is made, the question is whether the ingredients as required under Section 65 of the Indian Evidence Act, were fulfilled. In the affidavit of evidence, it has been exhaustively narrated by the Plaintiff as to how the documents are not available and as to why secondary evidence needs to be led. The conclusion drawn by the learned City Civil Court Judge that sufficient ingredients for invoking the provisions of the Act as regard leading secondary evidence are fulfilled, cannot be stated to be perverse. As far as the prejudice to the Petitioner is concerned, there is none. The admissibility of the documents are yet to be proved. At that stage the Petitioner can advance all contentions available to the Petitioner in law and on facts regarding admissibility of the documents.

4 In the circumstances, no interference is warranted. The writ petition is accordingly rejected.

(N. M. Jamdar, J.)