

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

WRIT PETITION NO. 4260 OF 2018

Babulal Surendra Debnath

...Petitioner

Versus

M/s. Deeplaxmi Food Industries,
Propreitor Deepak Jayantibhai Patel

...Respondent

.....

Mr.Pandit Kasar for the Petitioner.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 13, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 16th January, 2018 passed by the learned 3rd Jt. Civil Judge, Senior Division, Nashik thereby allowing the respondent/applicant to tender secondary evidence is challenged.
3. The respondent/applicant i.e., the plaintiff is a decree holder in Regular Civil Suit No. 262 of 2001 and hence, he has filed

execution proceedings. In the course of execution, the respondent/ applicant has filed an Inquiry Application bearing No. 389 of 2013 against the partnership firm viz. Super Papers Bhagidari Sanstha. The petitioner being a partner of the said partnership firm is made a party in the said inquiry. The respondent/ applicant wanted to lead evidence on the basis of the original partnership letter, however, the said letter is not produced before the Court. The respondent / applicant is not in possession of the said letter and, therefore, he sought permission to lead photocopy of the partnership letter of the said partnership firm. The said application was opposed by the respondent partnership firm. However, the learned Judge of the trial Court allowed the said application. Hence, this Writ Petition.

4. The learned Counsel for the petitioner has submitted that the petitioner was never a partner of the said partnership firm. The respondent/ applicant has prepared a forged letter of the said partnership firm wherein the petitioner is fraudulently shown as a partner of the said partnership firm. Therefore, the petitioner would not be in possession of any kind of such letter. Moreover, the said partnership letter is fabricated and false document and the

trial Court ought not to have allowed this evidence. It was necessary for the trial Court to verify what a real role is played by the respondent/applicant in the said partnership firm. He has further submitted that the respondent/ applicant has falsely impleaded the petitioner in this matter with ulterior motive to recover the money, which the petitioner is not liable to pay. In support of his submission, he has relied on the following judgments :-

- i) ***H.Siddiqui (Dead) By LRs Versus A. Ramalingam*** reported in ***(2011) 4 SCC 240.***
- ii) ***Shankar Lal Versus The Civil Judge (Jr. Division), Shahpura*** reported in ***2006 0 AIR (Raj) 187.***
- iii) ***Prakash Gurudas Timblo and others vs. Hemlatabai Ravikant Darne and others*** reported in ***2016 (5) Mh. L.J.***

5. In the case of ***H.Siddiqui (Dead) By LRs*** (*supra*), the Supreme Court while considering the provisions of Section 65 of the Indian Evidence Act, 1872 has held that the prayer of leading secondary evidence is not to be allowed liberally unless factual foundation is laid. No such permission can be granted.

6. In the case of ***Shankar Lal*** (*supra*), the learned Single Judge of the High Court of Rajasthan has held that the defendants have contended the case of forged document and the entire story has been concocted to lead secondary evidence and, therefore, the present photocopy of the document was not allowed, as it did not satisfy the requirement of Section 65 of the Indian Evidence Act, 1872. In the said case, the plaintiffs filed a civil suit for declaration and cancellation of the allotment letter issued by the Municipal Board when the trial proceeded. The plaintiffs have produced one writing of 1929 showing the transaction and sought permission to attest the photocopy of the same.

7. In the case in hand, the decree is already passed in favour of the applicant/ respondent and during execution in inquiry, the partnership letter of the respondent partnership firm is relied on. Considering the facts of the present case, the ratio laid down in the case of ***Shankar Lal*** (*supra*) is not useful.

8. In the case of ***Prakash Gurudas Timblo*** (*supra*), the learned Single Judge of this Court has held that it is necessary for

the trial Court to satisfy itself about the existence of the conditions under Section 65 of the Indian Evidence Act, 1872 under which such production can be allowed.

9. The ratio laid down by the Supreme Court and the learned Single Judge of this Court is applicable in all the matters where the issue of tendering secondary evidence is involved.

10. In the present case, the learned Judge of the trial Court has very well passed the order on the similar lines. Considering the reasoning given by the learned Judge of the trial Court, the order cannot be faulted with. The partnership letter is a necessary document in the inquiry. It is mentioned in the order that Notary Shri.Chandmal Motilal Bora before whom it was registered, expired on 27th August, 2013 and, therefore, it is not possible for the applicant/ respondent to procure the certified copy from the Notary. Moreover, the said document was produced before one Vishwas Co-op. Bank Ltd., Nashik for obtaining loan. The applicant/ respondent applied for that letter and other documents, which were submitted by the partnership firm viz. Super Papers Bhagidari Sanstha. At that time, the said Bank informed that the

documents would be produced, if the Court ordered. Thus, the learned Judge of the trial Court has considered the efforts taken by the applicant/respondent to acquire the original or authenticated copy of the said partnership letter. Thus, the foundation is laid by the respondent/applicant. No interference is required in the order dated 16th January, 2018 passed by the learned 3rd Jt. Civil Judge, Junior Division, Nashik. Hence, Writ Petition is dismissed in *limine*. Rule is discharged.

11. The trial Court to take note that if the said Bank has advanced a loan to the partnership firm viz. Super Papers Bhagidari Sanstha on the basis of the partnership letter, then that document can be called by issuing production summons against the said Bank to satisfy its conscience.

(MRIDULA BHATKAR, J.)