

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4956 OF 2015**

M/s Shamrock Impex Pvt Ltd. & Ors.

..Petitioners

Vs.

M/s. J. M. Constructions & Anr.

..Respondents

**Mr. Birendra Saraf a/w Ms Pooja Kshirsagar a/w Mr. Anand Chovatia i/b
Mr. Y. N. Adhia for the Petitioners**

**Mr. Charles De'Souza a/w Ms Mahima Sinha and Ms Anersa C. i/b VERUS
for the Respondents**

CORAM : R. M. SAVANT, J.

DATE : 24th FEBRUARY, 2016

P.C.

1 Though in the morning session the above Petition was adjourned to 7-3-2016, in view of the urgency, at the request of the Learned Counsel for the parties, the Petition is heard for admission in the afternoon session.

2 The Writ Jurisdiction of this Court is invoked against the order dated 12-2-2015 passed by the Learned Judge of the Small Causes Court by which order the application Exhibit 263 filed by the Petitioners herein who are the original Defendants in the Suit in question for the documents in question to be marked as exhibits, came to be rejected. The said documents are the certified copy of the death certificate of Balwantrai Mehta who is the father-in-law of the Respondent No.1, the second document is the obituary published in one of the local newspapers and the third document is a set of the copies of the

electricity bills issued under the Right to Information Act by the BEST in respect of the first floor premises and the premises at Roopsagar. The said documents have been refused to be exhibited principally on the ground that the Defendants / Petitioners herein would have to prove them in accordance with Section 67 of Evidence Act.

3 The Trial Court has observed that the request of the Defendants to mark the said documents as exhibits cannot be accepted at the said stage meaning there by it was open for the Petitioners to prove the said documents in accordance with law.

4 In my view, having regard to the ground on which the Trial Court has based its order of rejecting the application exhibit 263, no case for interdiction in the Writ Jurisdiction of this Court is made out. Needless to state that it would be open for the Defendants to lead evidence of the concerned witnesses so as to prove the said documents, which they had applied for being exhibited. The Trial Court would decide the issue as to whether the said documents are to be exhibited or not having regard to the said evidence, and also uninfluenced by the observations if any made in the impugned order.

5 With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]