

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

WRIT PETITION NO. 4651 OF 2016

Dr. M.K.Prakash

..Petitioner.

Vs

Smt. Snehmala Sapale & Anr.

.. Respondents

Mr. Bipin Joshi a/w Mr. Prayag Joshi, Advocate for Petitioner.

Mr. Raj Patel i/b Mohan Patel, Advocate for Respondents no. 1 to 4.

**CORAM : R.G.KETKAR,J.
DATE : 24/06/2016**

PC:

1. Heard Mr. Bipin Joshi, learned counsel for the petitioner and Mr. Raj Patel, learned counsel for respondents no. 1 to 4 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 6.2.2016 passed by the learned Judge, presiding over Court room No.11 of the Small Causes Court at Bombay in R.A.E. Suit No. 1547 of 2014. By that order, the learned trial Judge passed order on admissibility of the documents produced by P.W.1-plaintiff-3-Pravin Madhukar Kanekar along with list of documents Exhibit 20.

3. The respondents, hereinafter referred to as 'plaintiffs', have instituted suit against the petitioner, hereinafter referred to as

'defendant', under section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'), viz. non user of the suit premises. During the course of evidence of P.W.1, namely, plaintiff no.3, he produced documents received by the plaintiffs under Right to Information Act, 2005.

4. Mr. Joshi mainly attacked marking of certified copies at Exhibits 21 and 22 (1 to 3) on the ground that the information received under the Right to Information Act, 2005 (for sort, 'R.T.I. Act') is not a piece of evidence. He further submitted that the learned trial Judge proceeded on the footing that these are public documents and, therefore, there is presumption of genuineness under Section 76 of the Indian Evidence Act, 1872, (for short, 'Act'). He relied upon the order dated 13.7.2011 of this Court in Writ Petition No.5051 of 2011. In that case, officer under R.T.I. has certified photocopies and they were sought to be produced before the trial Court at Sr. no. 3 to 11. The learned trial Judge refused to mark those documents as exhibits. Aggrieved by that decision, the petitioner instituted the writ petition in this Court. This Court rejected the petition by observing that the trial Court has rightly marked the said documents as Articles-X to X-8 for the purpose of identification and the petitioner will have to prove these documents by following procedure laid down under the Act. Relying upon this order, Mr. Joshi submitted that the learned

trial Judge was not justified in marking these documents as exhibits. He also relied upon the decision of this Court in Rayabai Dhondiram Vs. The State, 1971 (Vol. LXXIV) Bombay Law Reporter 505 to contend that certified copies of documents are not admissible in evidence. Mr.Joshi also relied upon the decision of this Court in Om Prakash Berlia Vs. Unit Trust of India, All India Reporter, 1983 Bombay 1 to contend that the certified copies being secondary evidence, the plaintiffs will have to follow due process of law for proving the contents thereof.

5. On the other hand, Mr. Raj Patel supported the impugned order. He relied upon the decision of this Court in Avelino Rodrigues Vs. Executive Engineer, 2012 (4) Bom.C.R. 371 and in particulars paragraphs 4 to 7 thereof. He has also produced the documents which are marked exhibits by the learned trial Judge for perusal of the Court.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The plaintiffs have sought to produce documents received under the R.T.I Act. The plaintiffs have produced certified copies of these documents. It is in that context that the learned trial Judge observed that as the documents produced by the plaintiffs are the certified or true copies from the office record, the presumption of genuineness

under Section 76 of the Act is attracted. In the case of Avelino Rodrigues (*supra*), in paragraph 7 it is observed thus:

“7. Upon hearing the learned Counsel and on perusal of records, the settlement report was a true copy issued to the petitioners under Right to Information Act. The said document was issued by the Public Information Officer of the State Government. The said document has been obtained by the petitioners by due process of law and as such the question of petitioners being precluded from producing the said document does not arise at all. The relevancy or otherwise of the said document would have to be considered at the time of appreciating the evidence on record. It is not open to the learned Judge to go into the relevancy at this stage when it is not disputed that the documents were marked for identification. The said document was marked for identification during the examination of AW1 and as such, considering that the petitioners have obtained the certified copy of the said document from the official record of the State Government, the learned Judge ought to have permitted the petitioners to produce the said document and taken the said document on record.”

7. Mr. Joshi relied upon the decision in Rayabai Dhondiram's case (*supra*). In that case, two questions fell for consideration, namely, (1) whether, in the case of a public document, certified copies alone are admissible in evidence, or the original is also admissible in evidence; and (2) whether, if the original is also admissible in evidence, it must be proved in the same manner as any other document is required to be proved under sections 67 and 68 of the Act. The learned Single Judge of this Court held that original of a public document is admissible in evidence. It was further held that the concluding part of Section 78 of the Act

itself shows that in the case, at any rate, of the public documents enumerated in that section, the original or a certified copy would be admissible in evidence. As far as the second question is concerned, the learned Single Judge held that if the original of a public document is sought to be tendered in evidence, it must be proved in the manner required by law. In my opinion, the said decision does not advance the case of the defendant as it is not in dispute that the plaintiffs have obtained these documents under the R.T.I. Act and have produced certified copies.

8. Mr. Joshi relied upon the decision of this Court in *Omprakash Berlia* (supra). In that case, the question that fell for consideration was in the context of a copy of the return of allotments filed by the 8th defendant-company with the Registrar of Companies and an extract of the annual Return also so filed, both certified to be true by the Registrar under S. 610 of the Companies Act. The said true copy and extract have been admitted on record as the 1st defendant exhibits at Exhibits 17 and 18. The question was: Is the truth of their contents established prima facie as the learned counsel for the 1st defendant contends, or must the truth thereof be proved? After considering the law on the subject, the learned Single Judge held in paragraph 27 that the copy and extract (Exhibits 17 and 18) do not establish, even prima facie, the truth or accuracy or

correctness of the contents of their originals. They prove only what the contents of their originals are. In my opinion, this decision also is not helpful to the defendant. Even otherwise, mere marking of documents as exhibits does not amount to proving the contents thereof. The plaintiffs will have to prove the contents of the documents. Understood thus, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)