

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 4380 OF 2016

M/s. Radiance Properties India Ltd. ...Petitioner

Versus

M/s. Nuclear Healthcare Ltd ...Respondent

....

Mr.Akhilesh Dubey i/b. Law Counsellors, for the Petitioner.

Mr. G.S. Hegde a/w. T.J. Pandian, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2016

P.C.

1. Heard Mr. Akhilesh Dubey, learned Counsel for the petitioner and Mr. G.S. Hegde, learned Counsel for the respondent, at length.

2. Rule. Mr. Hegde waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 11.1.2016 passed by the learned 3rd Jt. Civil Judge, Senior Division, Thane below Exhibit-66 in Summary Suit No.11/2013.

By that order, learned trial Judge rejected the application made by the petitioner, hereinafter referred to as the 'plaintiff', for leading secondary evidence in respect of documents at Sr. Nos.5 and 6.

4. Mr. Dubey submitted that the plaintiff has instituted the suit under Order 37 of C.P.C. for recovery of Rs.1,30,93,978/-, amongst other reliefs. Along with the plaint, the plaintiff filed list of documents containing as many as 33 documents. The documents at Sr. Nos.5 and 6 are as under :

Sr. No.	Particulars
5	The Xerox copy of the agreement to lease executed by MIDC in favour of CSCL dated 12/04/1993.
6	The Xerox copy of the Deed of Assignment between the CSCL and the Dynamic dated 14/12/2007.

5. The plaintiff has filed certified copies of agreement of lease executed by MIDC in favour of CSCL dated 12.4.1993 and certified copy of deed of assignment between CSCL and Dynamic dated 14.12.2007. Learned trial Judge rejected the application on the ground that the documents at Sr. Nos.5 and 6 are not

the public documents and, therefore, cannot be exhibited.

6. On the other hand, Mr. Hegde submitted that the plaintiff did not produce certified copies and the learned trial Judge rightly rejected the application on the ground that the documents at Sr. Nos.5 and 6 are not the public documents. Mr.Dubey has produced the certified copies of the documents at Sr. Nos.5 and 6 for perusal of this Court and perusal of Mr.Hegde. Perusal of these documents show that it is certified copies. It is no doubt that these documents are *per se* not the public documents. The question is whether the learned trial Judge was justified in rejecting the application for producing certified copy. In my opinion, merely because the documents are not public documents that does not mean that permission to lead secondary evidence cannot be granted. Hence, the impugned order is set aside. Application Exhibit-66 is allowed. Petition is disposed of with no order as to costs. Rule is made absolute accordingly.

(R. G. KETKAR, J.)