

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No.8456 of 2016
[Converted from Civil Revision Application NO. 414 OF 2016]

Vikas Sitaram Redkar	...Applicant
<i>Versus</i>	
Ms. Vidya Dayanand Pai and Ors	...Respondents
....	
Mr.Suresh K. Mali, Advocate for the Applicant.	
Mr. Laxman Venkatesan, Advocate for Respondent No.1.	
....	

CORAM : R. G. KETKAR, J.

DATE : 15th July, 2016

P.C.

1. Not on board. At the request of Mr. Mali taken up in the production board.

2. Heard Mr. Suresh Mali, learned Counsel for the applicant and Mr. Laxman Venkatesan, learned Counsel for respondent No.1, at length.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.1' has challenged the judgment and order dated 30.1.2016 passed by the learned Judge, presiding over Court Room No.15 of the Small Causes Court at Mumbai

below Exhibit-65 in R.A.E. & R Suit No.125/182 of 2006. By that order, the learned trial Judge rejected the application taken out by defendant No.1 for setting aside the order/roznama dated 21.2.2015 and permitting him to submit his say on the admissibility of the documents of the plaintiff. In view of Section 7 of C.P.C., leave to convert this Civil Revision Application into Writ Petition is granted. Amendment shall be carried out forthwith. Office to number the writ petition.

4. In support of this Petition, Mr. Mali submitted that by order dated 30.6.2006 suit had proceeded exparte against defendant No.1. The order on the admissibility of the document filed by the plaintiff was passed on 11.1.2007. The order dated 30.6.2006 directing suit to proceed exparte against defendant No.1 was set aside on 4.6.2007. He submitted that the order of admissibility of documents was passed in the absence of defendant No.1 and, therefore, the said order may be set aside by giving an opportunity to defendant No.1 to file his say on the admissibility of documents. He, therefore, submitted that the impugned order may be set aside and the application filed by defendant No.1 may be allowed.

5. On the other hand, Mr. Venkatesan supported the impugned order. He submitted that in fact defendant No.1 had filed application Exhibit-61 for setting aside rozanama dated 20.3.2015. Said application was dismissed on 30.7.2015. In view thereof, present application is not maintainable. In any case he submitted that while dismissing the application, the learned trial Judge has observed in paragraph-4 that the party has to prove the document as per law. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that by order dated 11.1.2007, learned trial Judge has passed order on admissibility of documents filed by the plaintiff. By mere exhibiting the document does not mean that the contents of those documents are proved. The plaintiff will have to prove those documents in accordance with law. In fact, learned trial Judge has made this observation in paragraph-4 of the impugned order. Hence no case is made out for invocation of powers under Article 227 of

the Constitution of India. Petition fails and the same is dismissed.

7. It is made clear that where a decree is challenged by the applicant, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)