

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

WRIT PETITION NO. 7323 OF 2016

Jayvijay Picture Palace and Ors

..Petitioners.

Vs

K.N.Exhibitors and Ors

.. Respondents

Mr. S.C.Wakankar, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 17/11/2016

PC:

1. Heard Mr.S.C.Wakankar, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 17.6.2015 passed by the learned 2nd Jt. Civil Judge Senior Division, Satara below Exh.221 in Spl. Civil Suit No. 153 of 2005. By that order, the learned trial Judge rejected the application made by the defendants for seeking permission to lead secondary evidence of the agreement dated 8.4.2003. The defendants had earlier filed application Exh.211 for issuing witness summons to Rahul Haxar, proprietor of Rajat Exhibitors, for production of document titled as 'letter of arrangement ' dated 8.4.2003. It was rejected by the trial Court. The defendants thereafter filed application Exh.218 for reviewing that order. That application was rejected. The defendants thereafter filed application Exh.212 for production of that document which was

rejected. Aggrieved by the order passed below Exh.211, the defendants instituted Writ Petition No.7779 of 2015 which was dismissed on 6.4.2016. While dismissing that petition, statement on behalf of the petitioners-defendants that they will consider challenging the impugned order dated 17.6.2015 by adopting appropriate proceedings was recorded.

3. In support of this petition, Mr. Wakankar invited my attention to paragraph 19 of the written statement filed by defendant no.5. In paragraph 19, defendant no.5 contended that though prima facie it appears that agreement dated 8.4.2003 was made by respondent-plaintiff, in fact, it was entered into with Shri Rahul Haxar. He submitted that unless and until that document is produced on record, it will not be possible for the defendants to establish that the said agreement was, in fact, acted upon by the parties. He submitted that there is no other arrangement between the parties, save and except document styled as 'letter of arrangement' dated 8.4.2003. He, therefore, submitted that the petition requires consideration.

4. I have considered the submissions advanced by Mr Wakankar. I have also perused the material on record. As noted earlier, the defendants have filed application Exhibit-211 for issuing witness summons to Rahul Haxar. That was rejected by the learned trial Judge on 7.4.2015. Aggrieved by that order, the defendants instituted Writ Petition No.7779 of 2015 in this Court.

While rejecting the petition, it was noted that the defendants had issued notice to Mr Rahul Haxar at Exhibit 196 calling upon him to produce agreement dated 8.4.2003. This notice was replied by Mr Rahul Haxar at Exhibit 197. He denied any such transaction with the defendants. It was further noted that the agreement dated 8.4.2003 prima facie does not show that it was signed by Mr Rahul Haksar. Section 65 of the Indian Evidence Act, 1872 lays down cases in which secondary evidence relating to document can be given. It provides that the secondary evidence may be given of existence, condition, or contents of document. In the present case, the existence of the agreement itself is in dispute. Apart from that, the said document also does not bear signature of Mr Rahul Haxar. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. 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.)