

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7927 OF 2016**

Shri Naveen Hirala Khanna and ..Petitioners.
Ors

Vs

Mr. Mohammad Ali Suleman Vora .. Respondents
and Ors

Mr. Durgaprasad Sabnis and Mr. Durgesh Kulkarni i/b Lex Firmus,
Advocates for Petitioners.

Mr. Suraj S. Shah, Advocate for Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 28/07/2016**

PC:

1. Heard Mr. Durgaprasad Sabnis, learned counsel for the petitioners and Mr. Suraj Shah, learned counsel for respondent no.1 at length.
2. Rule. Mr. Shah waives service for respondent no.1. 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 petitioners have challenged the Judgment and order dated 6.4.2016 passed by the learned Judge, presiding over Court Room No.38, of the Court of Small Causes at Mumbai, Bandra Branch, below Exhibit 162 in R.A.E.& R. Suit No.267/642

of 2003. By that order, the learned trial Judge rejected the application filed by defendant no.1(c) and partner of defendant no.2 on behalf of the defendants, praying for direction to witness Mr. Purvesh Gajanan Gharat of Reliance Infrastructure Ltd to produce certificate as per Section 65B of the Indian Evidence Act, 1872 (for short, 'Evidence Act')

4. In support of this petition, Mr. Sabnis submitted that the respondent-plaintiff has instituted suit against the petitioners, hereinafter referred to as 'defendants', on the ground of non user as contemplated by Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The defendants have examined Mr. Purvesh Gajanan Gharat of Reliance Infrastructure Ltd for producing Electricity Bills. During the course of his examination-in-chief, DW 4 was asked following question:

(i) Whether you are ready to produce certificate as per Section 65B of the Evidence Act?

Answer given by the said witness is, "if Court directs then only."

5. Mr. Shah submitted that during his examination in chief, the witness deposed that he is not competent to issue the said certificate. He submitted that this aspect was considered by the learned trial Judge and accordingly rejected the application.

6. As noted earlier, the plaintiff has filed suit against the defendants under section 16(1)(n), among other grounds.

Defendants have examined DW 4 -Purvesh Gharat from Reliance Infrastructure Ltd. DW 1 has produced photo copies of electricity bills issued by B.S.E.S.Ltd which is taken over by Reliance Infrastructure Ltd. DW 4 has produced computer printout duly stamped and signed which were marked as Article Y-5 (1 to 6). DW 4 was called upon to produce the certificate as without such certificate documents cannot be admitted in evidence. On 31.10.2005, order was passed and as the said witness did not bring certificate as contemplated under section 65B, the documents were not marked as exhibit.

7. By rejecting the application, the learned trial Judge observed that before examining DW 4, it was incumbent on the part of the defendants to verify whether DW 4 has in fact brought all documents along with certificate. The defendants chose to examine DW 4 without verifying the aforesaid fact and accordingly the order was passed on 31.10.2015. The defendants thereafter filed application Exhibit 158 seeking permission to adduce secondary evidence in respect of documents mentioned in paragraph 5(a) of the application. That application was rejected by order dated 23.12.2015.

8. The learned trial Judge was also of the view that the present application was filed with a view to circumventing the earlier orders dated 31.10.2015 and 23.12.2015. In my opinion,

the approach adopted by the learned trial Judge is hyper-technical, more so when DW 4 answered that he will produce certificate under section 65B, if Court directs. Even if DW 4 is not competent officer to issue such certificate, that can be taken care of by directing competent authority of Reliance Infrastructure Ltd to produce the certificate as contemplated by Section 65B. In view thereof, the impugned order cannot be sustained and as such liable to be set aside and is accordingly set aside. Hence order.

(i) Application Exhibit 162 is allowed. If DW 4 Purvesh Gharat is not competent to issue certificate under section 65B of the Evidence Act, officer who is competent to issue such certificate of Reliance Infrastructure Ltd shall issue such certificate and will hand over the said copy to DW 4 Purvesh Gharat for producing it in the trial Court.

(ii) Liberty to apply to the trial Court for expeditious disposal of the suit. If such application is made, the learned trial Judge will pass appropriate order thereon.

(iii) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)