

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 6523 OF 2016

Vasudeo Gobindram Chabria
And Ors.

...Petitioners

Versus

M/s. Bakhtawar Construction
Co. Pvt. Ltd.

...Respondent

....

Mr. Chetan Yadav i/b. Vijay B. Dhingreja, Advocate for the
Petitioners.

Ms. Kavita A. Shah, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 08th August, 2016

P.C.

1. Not on board. At the request of Mr. Yadav taken up for admission. Heard Mr. Chetan Yadav, learned Counsel for the petitioners and Ms.Kavita Shah, learned Counsel for the respondent, at length.

2. Rule. Ms.Shah waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 5.3.2016 passed

by learned Judge, presiding over Court Room No.15 of the Small Causes Court at Mumbai below Exhibit-32 in R.A.E. Suit No.606/969 of 2013. By that order, the learned trial Judge rejected the application made by the defendants for directing the respondent, hereinafter referred to as the plaintiff to supply copy of the hard disk at the cost of the plaintiff.

4. In support of this Petition, Mr.Yadav submitted that the plaintiff's witness No.1 had filed affidavit in lieu of examination-in-chief. PW-1 deposed about external hard disk containing C.C.T.V. footage and said hard disk is referred at Serial No.5 in the list of the documents. The plaintiff has filed external hard disk along with the list of documents. However, the plaintiff did not supply copy of said hard disk to the defendants. The Advocate representing the plaintiff informed the defendants' Advocate to send cheque of Rs.8000/- which is approximate price of new hard disk. He, however, submitted that the plaintiff is not entitled to claim costs of the hard disk. The plaintiff filed reply setting out therein that he is willing to give copy of hard disk provided the Court directs the plaintiff. Ms.Shah submitted that the plaintiff has already given copies of

twelve photographs to the defendants. At the same time she reiterated that the plaintiff relies upon the said hard disk. In paragraph-5 of the impugned order, the learned trial Judge noted that the plaintiff is willing to supply copy of hard disk to the defendants provided hard disk at list of 32 GB for copying the contents in the hard disk is given by defendants or if the defendants pay amount of Rs.8000/- to the plaintiff towards cost of the hard disk. The learned trial Judge further noted that the defendants were given opportunity by the plaintiff to have copy of the data contained in the hard disk subject to paying the costs. Moreover, the plaintiff has already supplied the copies of photographs of the footage which are filed at Serial No.6 at list of documents Exhibit-29. In view thereof, the learned trial Judge rejected the application.

5. Once it is accepted that the plaintiff is relying upon the hard disk, it is obligatory on the part of the plaintiff to provide copy of said hard disk without charging any costs. Proviso to Order XVIII Rule 4(1) of Code of Civil Procedure, 1908 lays down that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents

which are filed alongwith affidavit shall be subject to the orders of the Court. Order XVIII Rule 4(1) reads thus:

“

Order XVIII

**HEARING OF THE SUIT AND EXAMINATION OF
WITNESSES**

4. Recording of evidence.-- (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.”

6. It is not in dispute that along with the affidavit in lieu of examination in chief, the plaintiff has filed hard disk. It is, therefore, imperative on the part of the plaintiff to supply copy of the hard disk without insisting of costs to the defendants. On this ground alone, the impugned order deserves to be set aside thereby allowing application Exhibit-32 filed by the defendants. The learned trial Judge will permit the plaintiff to give copy of the hard disk to the defendants without charging any costs. Rule is made absolute accordingly with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)