

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9036 OF 2016
WITH
WRIT PETITION NO. 9037 OF 2016**

Autocop (I) Private limited

..Petitioner.

Vs

Shri Mukund Dattatray Balkawde

.. Respondent

Mr. Mayur Khandeparkar i/b Mr M.K.Vig, Advocate for Petitioner.
Mr. Madhav J. Jamdar, Advocate for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 12/08/2016**

PC:

1. Heard Mr.Mayur Khandeparkar, learned counsel for the petitioner and Mr.Madhav Jamdar, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as defendant, has challenged the orders dated 7.4.2016 passed by the learned Addl. Judge, Small Causes Court, Pune, in Applications filed by the defendant either for returning the complaints with directions to the Registry for seeking complete compliance of the requisites as prescribed for instituting the suits or rejecting the suits for breaches set out in the applications.
3. In support of these petitions, Mr. Khandeparkar submitted that the respondent, hereinafter referred to as 'plaintiff, instituted

the suits for recovery of the premises in dispute as also for recovery of dues under leave and licence agreement. Along with the suits, the plaintiff did not produce original documents. He submitted that the plaintiff is under bounden duty to produce the documents upon which he relies along with the suits at the time of instituting the same. In case the documents are not in his custody, in that event, he has to apply to the Court stating that the documents upon which he relies are in whose custody and with the leave of the Court he has to give notice to the person/s in whose custody those documents are, to produce those documents. Thus, the suit is to be instituted only on the basis of the original documents and not otherwise. He submitted that despite specific order passed by the Court, the plaintiff did not produce the originals. He, therefore, submitted that either the plaints are required to be returned or suits are liable to be rejected for noncompliance of this requirement. In support of this proposition, he relied upon Order 4, Rule 1, Order 7, Rules 13,14, and 17, as also Order 13, Rule 9.

4. Mr. Khandeparkar submitted that Order 7, Rule 14 (1) lays down that where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he has to enter such documents in a list, and has to be produced in court when the plaint is presented by him and shall, at the same

time, deliver the document or a copy thereof, to be filed with the plaint. Sub-rule (2) thereof lays down that where any such document is not in the possession or power of the plaintiff, he shall, where possible, state in whose possession or power it is. He submitted that sub-rule (3) lays down that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit. He submitted that as the plaintiff did not produce original documents at the time of instituting suits, plaints are either liable to be returned for compliance or are liable to be rejected.

5. On the other hand, Mr. Jamdar supported the impugned orders. He submitted that the defendant has taken inspection of originals of Property Card of CTS No. 753, leave and licence agreement dated 12.10.2010. He also relied upon Order 13, rule 1 to contend that original documents are to be produced at or before settlement of issues. Admittedly, as on date issues are not settled. He, therefore, submitted that no case is made out for interfering of the impugned orders.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused

the material on record. Arguments which are advanced before this Court were also advanced before the learned trial Judge. The learned trial Judge considered the relevant provisions and in particular Order 13, rule 1 which lays down that original documents are to be produced at or before the settlement of issues by the parties. As against this, other provisions, namely, Order 7, rule 14 does not speak of production of original documents. The objection raised by the defendant as regards non-filing of original documents at the time of filing of plaints and, therefore, institution is improper, cannot be accepted. For the reasons recorded by the learned trial Judge, I do not find that the learned trial Judge committed any error in passing the impugned orders. Hence, Petitions fail and the same are dismissed. Liberty to the parties to apply for expeditious disposal of the suits. If such application is made, the learned trial Judge will pass appropriate order. 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.)