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

WRIT PETITION NO. 8156 OF 2016

M/s. Pranjape Schemes (Constructions)
Ltd. through Director, Shrikant Paranjape & Anr. ... Petitioners.

V/s.

Mr. Basavraj Ballapa Girisagar through
POA and Ors. ... Respondents.

Mr. P.S. Dani, Senior Advocate a/w. Prasad Kulkarni for the
Petitioners.

Mr. Archit Jayakar a/w. Rahul Jhaveri i/b. Jayakar & Partners for the
Respondents.

CORAM : N.M. Jamdar, J.

10 October, 2016.

Oral Order :-

Heard the learned Counsel for the parties.

2. By order dated 24 June 2016, the learned Civil Judge, Small Cause Court, Pune partly allowed the application filed by the Respondents – Plaintiffs. The learned Judge permitted the Respondents – Plaintiffs to lead secondary evidence in respect of

documents at Exhibit 483/27 to 29 and 35. As far as this direction is concerned, I do not find any error in the same as the learned Judge has not absolved the Respondents – Plaintiffs from their liability to prove the execution of the documents. Therefore, the aspect of execution and evidentiary value of these documents have been kept open.

3. As far as the direction to the Respondents – Plaintiffs to prove the documents filed at list Exh.483/5 to 9, 26,30,34,36,37 and 40 as per Section 61 to 67 of Evidence Act, the learned Counsel for the Petitioner pointed out that in the body of the order there is an observation that there is no need for the Plaintiffs to seek permission to lead secondary evidence and at the same time stating that the Plaintiffs are required to prove the documents as per Sections 61 to 67 of the Evidence Act. It is therefore not clear that as to whether the permission has been granted to the Respondents – Plaintiffs or it has been refused. It was also contended that the learned Judge has not clarified what would be the sequence in which the secondary evidence will be led, whether it will be in the midst of the evidence of the Respondents – Plaintiffs or it will be after the evidence is complete.

4. In my opinion, the parties can apply to the learned Civil Judge to seek appropriate clarification as does appear to be

contradictory in the impugned order. The learned Judge will also have to clarify the sequence in which the evidence will have to lead so that the parties can be clear as to the manner in which the trial will proceed.

5. Accordingly, the Writ Petition is disposed of by giving liberty to the parties to seek appropriate clarification in respect of clause (3) of the order dated 24 June 2016 and also the sequence as stated above. The learned Judge will hear both the sides and clarify the position by passing a fresh order, if necessary. The learned Civil Judge will issue necessary clarification/order as early as possible, considering the limited issue involved.

(N.M. Jamdar, J.)