

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7779 OF 2015

Jayvijay Picture Palace through its Partners
Ramchandra G. Palkar and others ... Petitioners
Vs.
K. N. Exhibitors through its Proprietor
Kanhaiyyalal Hiralal Navandhar and others ... Respondents

Mr. Mandar Limaye for Petitioners.
Mr. V. A. Shastry for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 06, 2016

P.C. :

Heard Mr. Limaye, learned Counsel for petitioners and
Mr. Shastry, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 07.04.2015 passed by the learned Joint Civil Judge, Senior Division, Satara below exhibit-211 in Regular Civil Suit No..153 of 2008. By that order, the learned trial Judge rejected the application made by the petitioners, hereinafter referred to as defendants to issue witness summons to Rahul Haxar, proprietor of Rajat Exhibitors for producing original letter of arrangement dated 08.04.2003.

3. Respondent No.1, hereinafter referred to as plaintiff, has instituted Suit against the defendants for recovery of approximately Rs.40,00,000/- on the ground that he had paid Rs.40,00,000/- towards rent of theatre owned by defendants for the period from 01.04.2003 to 10.10.2008. During the pendency of the Suit, defendants took out application exhibit-211 on 07.03.2015 for issuing witness summons to Mr. Rahul Haxar with further direction to produce original letter of

arrangement. Along with the application, defendants enclosed photocopy of the said letter of arrangement. Plaintiff resisted the application by filing say below exhibit-214. It was inter alia contended that the document produced is the photocopy and is not admissible in evidence. The said document is also not signed by Mr. Rahul Haxar and is not coming through proper custody. It was further contended that defendants had sent notice exhibit-196 calling upon Mr. Haxar to produce original letter of arrangement. It was replied by Mr. Haxar denying the said transaction with the defendants.

4. By the impugned order, the learned trial Judge rejected the application on the ground that the document is not signed by Mr. Rahul Haxar and he is not the proper person to produce the document.

5. Mr. Limaye submitted that Mr. Rahul Haxar, proprietor of Rajat Exhibitors had paid Rs.10,00,000/- to Vijay Raj, erstwhile distributors and the letter of arrangement was addressed by Jayvijay Picture Palace to Rajat Exhibitors. Mr. Limaye invited my attention to paragraphs 3 and 4 of the said letter of arrangement and submitted that under this arrangement, Mr. Rahul Haxar was to pay Rs.10,00,000/- directly to Shri Vijay Raj Software Private Limited. The original letter of arrangement is with Mr. Rahul Haxar and therefore, it is necessary to issue witness summons to Mr. Rahul Haxar for producing the original letter of arrangement.

6. It is not possible to accept submissions advanced by Mr. Limaye. In the first place, defendants had issued notice to Mr. Rahul Haxar, which is at exhibit-196. This was replied by Mr. Haxar and the reply is produced at exhibit-197. It appears that Mr. Haxar has denied any such transaction with the defendants. Secondly, perusal of the letter of arrangement

dated 08.04.2003, prima facie, shows that it is not signed by Mr. Haxar. The learned trial Judge rejected the application on the ground that Mr. Haxar has not signed the said document, and therefore, he is not a proper person to produce the document. I do not find that the learned trial Judge has committed any error in arriving at this conclusion. 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.

7. Mr. Limaye states that petitioners have filed application for leading secondary evidence and that was rejected on 17.06.2015. He states that petitioners will consider challenging the said order by adopting appropriate proceedings. Statement made by Mr. Limaye is recorded.

(R. G. KETKAR, J.)

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