

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9293 OF 2016

Shri Vishwas Panditrao Jape .. Petitioner

vs.

Shri Shrikant Bhagwan Phadnis .. Respondent

Mr.R.M.Pethe for the petitioner

Mr.Atul P. Vanarse for the respondent

CORAM : K. K. TATED, J.
DATE : AUGUST 12, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner defendant challenges the orders dated 21.6.2016 and 5.7.2016 passed by Small Causes Court, Pune below Exhibit-49 and 54 rejecting defendant's application for directing plaintiff to produce original copy of Leave & License Agreement and to direct the plaintiff to admit the relationship between the parties in view of Leave and License Agreement.

3 As soon as both the applications were rejected by Trial Court defendant filed application below Exhibit-61 on 20.7.2016 for liberty to lead secondary evidence pertaining to the agreement between the parties. Unnumbered 2nd paragraph of that application reads thus:

“However, it is very much necessary to come on record the real facts with the help of documents. However, the Court had rejected the application to give directions to the Plaintiff to produce the original. However, the Plaintiff categorically admitted that he is not having any original with him. Further, there is no contention of the Plaintiff that there were any other agreements between the Plaintiff and the Defendant pertaining to the alleged suit property. As per the Plaintiff, there is one photo copy which is on record. A plain reading of the same indicates that the said is a lease agreement. If the Plaintiff is not having possession of any other document and original document between the Plaintiff and the Defendant and original document between the Plaintiff and the Defendant regarding the suit property in that case, the Defendant is required to prove the agreement with the help of documentary evidence. Hence, the Defendant be permitted to lead secondary evidence in the present matter.”

4 That application was strongly opposed by the plaintiff's advocate by filing their reply dated 22.7.2016.

5 The Trial Court by order dated 28.7.2016 allowed the defendant's application below Exhibit-61 and permission granted to lead secondary evidence in respect of leave and license agreement executed on 4.5.1980.

6 Copies of Exhibit-61 and order on that Exhibit are produced by advocate for respondent plaintiff across the bar. Same is taken on record and marked 'X' for identification.

7 In view of subsequent development that the defendant on its own filed application below Exhibit-61 for secondary evidence for the same

document, I do not find any substance in the present Writ Petition to entertain. Hence, Writ Petition stands rejected with no order of costs.

JUDGE