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

CIVIL APPLICATION NO.300 OF 2016

with

WRIT PETITION NO. 9251 OF 2005

Mr. Bhaskar Sukrya Joshi and Anr.

... Applicants.

In the matter between

Smt. Sharda Rama Patil & Ors.

... Petitioners

V/s.

Mr. Bhaskar Sukrya Joshi & Anr.

... Respondents.

Mr. Madhav Jamdar a/w. Rohan Surve for the Applicants and Orig.
Respondents.

Mr. A.A. Garge for the Original Petitioner.

CORAM : N.M. Jamdar, J.

14 October, 2016.

Oral Order :-

By this application the early hearing of the Writ Petition is sought. Considering the nature of the order impugned in the Petition, Civil Application is allowed and the Petition is taken up for disposal forthwith.

2. The Petitioner is the Plaintiff has filed a Suit bearing Regular Civil Suit No. 417 of 1999 in the Court of Civil Judge, Junior Division, Kalyan seeking partition of the suit property and declaration that the will dated 19 September 1997 is forged and fabricated. In this suit the Petitioner filed an application for taking compact disk as an additional evidence as per the amended Section 65-A of the Evidence Act. This application was preferred below Exhibit 97. The Application was contested by the Respondents and by order dated 17 November 2005, the application was rejected. The Rule was issued on 10 February 2006 and by way of interim relief, proceedings in the suit have been stayed.

3. The learned Judge has rejected the application primarily on two grounds that the application does not give particulars which are required for leading secondary evidence under Section 65 of the Evidence Act and that the application was moved at belated stage. As far as the application moved at belated stage when the arguments were to be advanced is concerned, the suit filed by the Petitioner has remained stayed for last 11 years and it is the Petitioner who is prejudiced. As far as the lack of particulars in the application are concerned, the Applicant can always file another application giving all the particulars and satisfying the requirement of law for leading secondary evidence and the statutory requirements of Section 65 of the Evidence Act.

4. In the circumstances, I am of the opinion that the Writ Petition can be disposed of by giving liberty to the Petitioner to file another application in terms of what is stated above. If such an application is made by the Applicant within period of eight weeks from today, the learned Civil Judge will decide the same as early as possible.

5. Keeping all contentions of the parties open as regard the proposed application to be filed by the applicant, the Writ Petition is disposed off. Needless to state that the Applicant will have to comply with all the statutory requirements, if the Petitioner wants to lead secondary evidence in respect of the compact disk in question. It is clarified that the application so made will be decided on its own merits.

(N.M. Jamdar, J.)