

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

**WRIT PETITION NO.9567 OF 2016
WITH
WRIT PETITION NO.9594 OF 2016**

Dhirajlal Raishi Chheda

..Petitioner.

Vs

Raishi Shivji Chheda (dead) through
his L.Rs Mithiben R.Chheda (dead),
Mr. Mukesh Raishi Chheda and Ors.

.. Respondents

Mr. V.Y.Sanglikar a/w Mr. Dipen Furiya i/b M/s Shah & Furia
Associates, Advocates for Petitioner.

Mr. Yahya Goghari a/w Mr. Kevin Chettiar i/b Mr Jatin Seth,
Advocates for Respondents.

**CORAM : R.G.KETKAR,J.
RESERVED ON : 24/08/2016
PRONOUNCED ON: 20/09/2016.**

PC:

1. Heard Mr.V.Y.Sanglikar, learned counsel for the petitioner and Mr.Yahya Goghari, learned counsel for the respondent at length.
2. Writ Petition No. 9567 of 2016 is directed against the judgment and order dated 2.5.2016 passed by the learned Judge presiding over Court Room No.8 of the Small Causes Court at Mumbai below Exhibit 229 in R.A.D. Suit No.720/1334 of 2004. By that order, the learned trial Judge allowed the production and documents at Sr.No. A-1 to AA-27 were marked Exhibits, except

documents at sr. Item no. A-1 at page no. 11 to 16 and 18 to 22; document Item no.C-3 at page no. 32 to 36 and 39 to 51, document at Item no.F-6, document at Item no.G-7, document at item no. I-9 and document at Item no.O-15 and P-16. The petitioner-plaintiff thereafter filed Review Application No.10 of 2016 which was rejected on 19.7.2016. The said order is also impugned in this petition.

3. Writ Petition No.9594 of 2016 is directed against the Judgment and order dated 2.5.2016 passed by the learned trial Judge below Exhibit 314 in L.E. Suit No. 141/173 of 2008. By that order, the learned trial Judge allowed the production and documents at sr.no. A-1 to AA-27 were marked Exhibits, except documents at sr. Item no.A-1 at page no. 11 to 17 and 18 to 22; document Item No.B-2, document Item no. C-3 at page no.23 to 36 and 39 to 51, document Item No.D-4, document Item No.F-6, document Item No.G-7, document Item No. K-11, document Item no.M-13, document Item No.O-15, document Item No.Q-17, document Item No.R-18. The petitioner-plaintiff thereafter filed Review Application No.9 of 2016 which was rejected on 19.7.2016. The said order is also impugned in this petition as well.

4. Petitioner in Writ Petition No.9567 of 2016 has instituted R.A.D.Suit No.720/1334 of 2004 against Raishi Shivaji Chheda,

since deceased, through his legal representatives (a) to (d) for declaration that he is a tenant in respect of Flat no.1 on second floor of Samavsaran Building, Mahatma Gandhi Road, Ghatkopar, Mumbai-400086 (for short, 'suit premises') and for possession of the suit premises. Petitioner in Writ Petition No.9594 of 2016 has instituted L.E.Suit No. 141/173 of 2008 against Raishi Shivji Chheda, since deceased, through his legal representatives (a) to (d) for mandatory injunction to remove themselves from the suit premises, among other reliefs.

5. During the pendency of the R.A.D.Suit, the defendant filed application Exhibit 229 on 24.2.2016 for production of documents set out at sr.no.(a) to (aa) (27 documents) which are annexed to the compilation of documents and mark the same as Exhibits in evidence in the suit. The defendant contended that he does not intend to lead oral evidence in that suit. However, he intends to lead documentary evidence in support of the case of the original defendant Shri Riashi Shivji Chheda, since deceased. The learned trial Judge has partly allowed production of documents on 2.5.2016, as more particularly indicated earlier. Review Application preferred by the plaintiff was dismissed on 19.7.2016. It is against these orders, the plaintiff has instituted Writ Petition No.9567 of 2016.

6. During the pendency of the L.E.Suit, the defendant filed

application Exhibit 314 on 23.3.2016 for production of documents. The learned trial Judge partly allowed the production on 2.5.2016, as indicated earlier. The plaintiff preferred Review Application which was dismissed on 19.7.2016. It is against these orders, the plaintiff has instituted Writ Petition No.9594 of 2016.

7. In support of these Petitions, Mr. Sanglikar strenuously contended that the learned trial Judge was not justified in passing the impugned orders. He relied upon Section 43 of the Indian Evidence Act, 1872 (for short, 'Act') to contend that Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. He submitted that Section 40 lays down that the existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is, whether such Court ought to take cognizance of such suit, or to hold such trial. Section 41 lays down that a final judgment, order or decree of a Competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or to take away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to

any specific thing not as against any specified person but absolutely, is relevant when the existence of any legal character, or the title of any such person to any such thing, is relevant. In other words, judgment in rem is relevant when existence of any such legal character or title of any such person is relevant. Section 42 lays down that Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

8. Mr. Sanglikar submitted that the learned trial Judge has allowed production of orders passed at interlocutory stage which do not conclusively determine the rights of the parties. They are subject to evidence being led in the proceedings. He submitted that in the applications filed in the R.A.D. Suit and the L.E.Suit, it is specifically asserted that he does not intend to lead oral evidence in the suit. If that be so, he cannot be allowed to lead documentary evidence. Documentary evidence can be admitted in evidence subject to proving its content. As the defendant has not led oral evidence, he cannot be allowed to produce documentary evidence. In fact, the orders passed by the different Courts do not tantamount to evidence. The learned trial Judge was, therefore, not justified in admitting them in evidence

and marking them as exhibits. He submitted that the party intending to produce documents can be cross examined by the other side and it is only thereafter the document can be admitted in evidence. That apart, the learned trial Judge while allowing the applications and marking documents as exhibits, has not considered relevancy or otherwise of these documents. He submitted that by admitting judgments/orders in evidence and marking them as exhibits has seriously caused prejudice to the plaintiffs in both the suits. In support of his submissions he relied upon the following decisions:

9. K. G. Premshankar Vs. Inspector of Police, JT 2002 (7) SC 30 and in particular paragraph 25 thereof. In paragraph 25, the Apex Court referred to its earlier decision in Kharkan Vs State of U.P., 1965 SC 83. In that case, the Apex Court has observed that the earlier judgment can only be relevant if it fulfills the conditions laid down by Sections 40 to 43 of the Act. The earlier judgment is no doubt admissible to show party and decision but it is not admissible for the purpose of relying upon the appreciation of evidence.

10. Legal Representative of Manohar Vs Vishvash Tukaram 2008 (3) Bom CR 166 and in particular para 5 thereof to contend that certified copy of a plaint is not a public document. Hence, it requires proof. For proving such document, the original plaint

should have been called in the Court. That is not done, hence, the certified copy of the plaint could not be said to be proved at all.

11. Himendra Rasiklal Ghia Vs. Subodh Modi, 2008 (6) Bom C.R. 519 (FB) and in particular paras 61 and 63 to contend that a document can be exhibited in evidence only when such document is admissible in evidence and not otherwise.

12. H. Siddiqui Vs. A Ramlingum, (2011) 4 SCC 240 and in particular paras 12, 14 and 15 thereof. In paragraph 12, the Apex Court dealt with production of secondary evidence. In paragraph 14, it is observed that merely because party had admitted his signature on the photocopy of the Power of Attorney and did not admit the contents thereof, the trial Court overruled the objections raised by the appellant-plaintiff to call upon the defendants to produce the original power of attorney on the ground that photocopy of the power of attorney was shown to the respondent in his cross examination where he had admitted his signature. The Appellate Court observed that the trial Court could not proceed in such an unwarranted manner. In paragraph 15, the Apex Court referred to the decision in State of Bihar Vs Radha Krishna Singh, (1983) 3 SCC 118. In paragraph 40 of that decision, the Apex Court has observed that admissibility of a document is one thing and its probative value is quite another. A

document may be admissible and yet may not carry any conviction and weight or its probative value may be nil. For all these reasons, he submitted that the impugned orders deserve to be set aside thereby dismissing Applications Exhibit 229 in R.A.D Suit No.720/1334 of 2004 and Application Exhibit 314 in L.E.Suit No.141/173 of 2008.

13. On the other hand, Mr. Gohari has supported the impugned orders. He has taken me through the impugned orders and submitted that the judgments and orders are between the same parties in different proceedings filed in different fora and in respect of the suit premises. While allowing production partly, the learned trial Judge has referred relevancy of these documents. In fact, some of the documents are filed by the plaintiff himself and they were marked as Exhibits. He, therefore, submitted that no case is made out for interfering with the impugned orders.

14. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is common ground between the parties that the decision rendered in Writ Petition No.9567 of 2016 will govern the fate of Writ Petition No.9594 of 2015. In view thereof, for deciding these writ petitions, the facts in Writ Petition No.9567 of 2016 are considered.

15. Defendant has filed Exhibit 229 in R.A.D. Suit No.720/1334

of 2004. In paragraph 1, the defendant asserted that he does not intend to lead oral evidence in the suit. However, he intends to lead documentary evidence in support of the case of original defendant Shri Raishi Shivaji Chheda, since deceased. In paragraph 2, clauses (a) to (aa), the defendant has sought production of as many as 27 documents. These documents can broadly be classified into following categories:

1. Orders passed by this Court in Suit No. 1861 of 2002 instituted on the Original Side of this Court between the same parties. These documents are covered by clauses (a), (b),(c),(d),(e),(h),(j),(n);
2. Orders passed by the Small Causes Court covered by clauses (l) and (m);
3. Orders passed by the City Civil Court covered by clauses (r)(u),(w),(y),(aa);
4. Hon'ble Chief Minister covered by clause (k);
5. Pleadings/Affidavit in support thereof covered by clauses (a),(c),(q),(s),(t),(v),(x),(z);
6. Correspondence covered by clauses (f) and (g)
7. Investigation reports covered by clauses

(i),(o) and (p) of paragraph 2 of the application.

16. As far as orders passed by this Court in Suit No.1861 of 2002 are concerned, the defendant came with the case that the suit is instituted by the deceased defendant as plaintiff no.1. Plaintiff no.2 is wife of plaintiff no.1. Plaintiff no.3 is Mukesh Chadda and his wife is plaintiff no.4, against the plaintiffs herein, defendant no.1 and his wife defendant no.2 therein. Two sisters are joined as formal defendants no.3 and 4. Proceedings and orders passed therein directly relate to the suit premises involved in the present suit. The learned trial Judge has considered provisions of Sections 42 and 43 of the Act and marked these orders as exhibits.

17. As far as the orders passed by the Small Causes Court in paragraph 2(l) and (m) are concerned, in paragraphs 31 and 32, the learned trial Judge observed that in R.A.E. Suit No. 481/900 of 2004 the parties in the proceedings are the present plaintiffs and the deceased defendant. They are relevant to the present proceedings.

18. As far as the orders passed by the City Civil Court covered by clauses (r),(u),(w),(y),(aa) of paragraph 2 are concerned, they are orders passed in :

1. L.C.Suit No.7422 of 1994 between the plaintiff and the defendant;

2. L.C.Suit No.7860 of 1994;
3. L.C.Suit No.207 of 1995;
4. L.C.Suit No.208 of 1995; and

are marked as exhibits on the ground that those proceedings are between the present plaintiffs and the deceased defendant herein.

19. As far as the order dated 14.9.2012 passed by the Hon'ble Chief Minister in Complaint No. 4 of 2002 covered by clause (k) of paragraph 2 is concerned, the learned trial Judge observed that the said order is already exhibited in companion suit and was accordingly marked as exhibit.

20. As far as pleadings and affidavits in support thereof covered by clauses (a),(c),(g),(s),(t),(v),(x) and(z) of paragraph 2 are concerned, the learned trial Judge declined to mark them as exhibits on the ground that though they are certified copies, they are not public documents. As the defendant did not lead oral evidence, the same cannot be marked as exhibits.

21. As far as documents covered by clauses (f) and (g) of paragraph 2 are concerned, they are certified copy of letters dated 12.8.2008 and 21.10.2008 from India Security Press to the Registrar of Small Causes Court. Though they are certified copies, no oral evidence led by the defendant to prove the documents. The learned trial Judge therefore declined to mark them as

exhibits.

22. As far as investigation reports covered by clauses (i), (o),(p) of paragraph 2 are concerned, the learned trial Judge declined to mark them as exhibits on the ground that they are not original copies but are certified copies. In addition to that, the defendant did not lead any oral evidence to prove the documents.

23. Mr. Sanglikar relied upon the decision in K.G.Premshankar (supra) and in particular paragraph 25 thereof. In that paragraph, the Apex Court preferred to its earlier decision in Kharkan (supra) wherein it was observed that the earlier judgment can only be relevant if it fulfills the conditions laid down in Sections 42 to 43 of the Act. The earlier judgment is no doubt admissible to show party and decision but it is not admissible for the purpose of relying upon the appreciation of evidence. Nobody can dispute with the proposition laid down therein. The earlier decision is not admissible for the purpose of relying upon the appreciation of evidence. It is, however, material to note that the earlier judgment is held to be admissible to show the party and decision. As note earlier, in the present case the suits are between the same parties and in respect of the same suit property. The learned trial Judge has held that orders passed are relevant for deciding the controversy between the present suit. In view thereof, this decision does not advance the case of

the plaintiffs.

24. In the case of Legal Representative of Manohar (supra), the defendant had instituted Second Appeal in this Court. In paragraph 5, it was noted that the plaintiff had placed on record the judgment delivered in a suit instituted by him for declaration of his ownership against the State of Maharashtra. Certified copies of the judgments delivered by the trial Court and the Appellate Court were placed on record. In that suit, the defendant was not party. After considering Sections 40,41 and 43 of the Act, this Court observed that the said decisions do not fall within the scope of these provisions. It was further observed that certified copy of the plaint is not a public document. It requires proof. For proving such document, original plaint has to be called in the court. As that was not done, certified copy of the plaint could not be said to be proved at all. In the present case, the learned trial Judge has declined to mark documents covered by clauses (a), (c) of paragraph 2 and marked documents covered by clauses (q), (s), (t), (v), (x), (z) on the ground that though the plaintiff is not party to the suit, yet he has signed plaint as Constituted Attorney of the deceased defendant and has admitted his signature thereon. During the course of arguments, Mr Sanglikar did not dispute the said finding. In view thereof, I do not find that the learned trial Judge has committed any error in

declining to mark the documents covered by clauses (a) and (c) in respect of Notice of Motion and affidavit in support thereof and marking the documents covered by clauses (q), (s), (t), (v), (x) and (z) of paragraph 2 of the application are concerned.

25. Mr. Sanglikar relied upon the decision in the case of Hemendra Rasiklal Ghia (*supra*) and in particular paragraphs 61 and 63 thereof. Full Bench of this Court reproduced Questions A and B in paragraph 35. Question A reads thus:

At which stage, the objection to the admissibility and/or proof of document which may be produced or tendered should be raised; considered and decided by the Court?

The said question was discussed in paragraphs 59 to 89. This Court referred to provisions of Order VII, VIII, XIII, XVIII of C.P.C. and ultimately conclusions were recorded in paragraph 92 while answering Question A. These conclusions are thus;

“(i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.”

Mr. Sanglikar submitted that the documents sought to be produced by the defendant are inadmissible in evidence. Clause (3) extracted herein above shows that objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on the question until final judgment in a case. In view thereof, while deciding the suit finally the learned trial Judge will undoubtedly consider admissibility and also relevancy of the documents marked as exhibits other than the orders passed by this Court.

26. Mr. Sanglikar relied upon the decision of H. Siddiqui to contend that documents covered by clauses (q),(s) (t),(v) (z) of paragraph 2 should not have been marked as exhibits. For the reasons already indicated, in my opinion, this decision does not assist the case of the plaintiffs.

27. In the light of the above discussion, I do not find any merit in these petitions. the petitioner-plaintiff has, by challenging the impugned orders, wasted considerable judicial time of trial Court as also of this Court. In my opinion, the proceedings are nothing but abuse of process of court as also abuse of process of law.

28. In the case of Ramrameshwari Devi Vs. Nirmala Devi, (2011) 8 Supreme Court Cases 249, the Apex Court has observed that time has come for imposing realistic costs for delaying litigation as also for raising frivolous pleas. In paragraphs 52 and

54, it was observed thus:

“52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the Defendants or Respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged

documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.”

In paragraph 55, the Apex Court observed that the other factor which should not be forgotten while imposing costs is for how

long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts.

29. In the case of Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR 2012 S.C. 1727, the Apex Court referred to the decision of Ramremeshwari Devi (supra). In paragraphs 84 and 85, it was observed thus: -

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in Ramrameshwari Devi and Ors (AIR 2011 SC (Civ) 1776: 2011 SCW 4000) (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting

frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

30. In the case of Messer Holding Ltd Vs. Shyam Madanmohan Ruia, AIR 29106 Supreme Court 1948, in paragraph 44, the Apex Court referred to the decision of Ramrameshwari Devi (supra) and observed thus:

“44. This case should also serve as proof of the abuse of the discretionary jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases.”

31. In my opinion, the present proceedings are nothing but abuse of process of court as also abuse of process of law. In view of the decision of the Apex Court in Ramrameshwari Devi (supra), Maria Margarida Sequeria Fernandes (supra) and Messer Holding Ltd (supra), this is a fit case for imposing exemplary costs against the petitioner. Writ Petitions fail and the same are dismissed with costs quantified at Rs.25,000/- in each petition. Costs shall be paid by the petitioner within 2 weeks from today,

failing which the learned trial Judge will pass appropriate order.
Order accordingly.

(R.G.KETKAR, J.)