

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

WRIT PETITION NO.9965 OF 2016

M/s. National Transport Company ..Petitioner.

Vs

Shri Navinchandra Khimchand Shah and Ors. .. Respondents

Mr. Yogeshwar S. Bhate, Advocate for Petitioner.

Mr. K.H.Modi i/b M/s S. Pathak & Co., Advocates for Respondents No.1 and 2.

**CORAM : R.G.KETKAR,J.
DATE : 04/10/2016**

PC:

1. Heard Mr.Y.S.Bhate, learned counsel for the petitioner and Mr. K.H.Modi, learned counsel for respondents no.1 and 2 at length. Mr. Bhate orally applies for deleting respondent no.3 on the ground that respondents no.1 and 2 being original plaintiffs, are the contesting respondents. Leave to delete respondent no.3 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Modi waives service for respondents no.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant no.2', has challenged the Judgment and order dated 13.7.2016 passed

by the learned Judge presiding over Room No.8 of Small Causes Court at Mumbai below Exhibit-73 in R.A.E.&R. Suit No. 560/972 of 2001. By that order, the learned trial Judge rejected the application made by defendant no.2 for production of (i) partnership deed and (ii) rent receipts issued by M/s N. Jivanlal & Co. from 1963 onwards to defendant no.2.

4. In support of this petition, Mr. Bhate has taken me through cross examination of defendant no.2 conducted by the plaintiffs. He submitted that during the course of cross examination, defendant no.2 deposed that he has documentary evidence to show that defendant no.2 was licensee or sub-tenant of N. Jivanlal & Co. in the year 1963. He went as per the record and, therefore, he did not produce documentary evidence to show that defendant no.2 was licensee or sub tenant of N. Jivanlal and Co. in the year 1963. The said document is rent receipt issued by N.Jivanlal & Co., in favour of defendant no.2. He submitted that defendant no.2 filed application dated 23.2.2016 for producing partnership deed and rent receipts issued issued by N. Jivanlal & Co from 1963 onwards. However, while rejecting the application, the learned trial Judge did not deal with this prayer at all. He, therefore, submitted that defendant no.2 may be permitted to produce recent receipts issued by N. Jivanlal & Co. in favour of defendant no.2.

5. On the other hand, Mr. Modi submitted that the plaintiff called upon defendant no.2 to produce rent receipts issued by N.Jivanlal & Co. The plaintiffs also called upon witness to produce partnership deed showing that he was admitted as partner in defendant no.2 on 26.8.1976. In other words, the plaintiffs did not call upon witness to produce rent receipts purportedly issued by N. Jivanlal & Co in favour of defendant no.2. In any case, defendant no.2 has produced photocopies and not original copies and, therefore, the learned trial Judge was justified in rejecting the application.

6. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As far as the partnership deed is concerned, witness of defendant no.2 admittedly did not produce the partnership deed showing that he was inducted as partner on 26.8.1976. The said partnership deed is also not in respect of defendant no.2 but it is in respect of M/s.Kaniyalal & Co. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the prayer to the extent of seeking permission to produce partnership deed.

7. In so far as the prayer for production of rent receipts issued by N.Jivanlal & Co in favour of defendant no.2 is concerned, perusal of the impugned order does not show that the

learned trial Judge has considered this prayer. No reasons are also given for rejecting the application to the extent of production of rent receipts issued by N. Jivanlal & Co. in favour of defendant no.2. In view thereof, to this extent the impugned order is set aside, thereby, directing the learned trial Judge to reconsider- Exhibit-73 in respect of prayer (a) for production of rent receipts issued by N. Jivanlal & Co. from 1962 onwards to defendant no.2.

8. Learned counsel appearing for the parties state that the next date of hearing before the trial Court is 14.10.2016. The learned trial Judge is requested to decide application Exhibit-73 to the limited extent indicated herein above within two weeks from the date of appearance of the parties. All contentions of the parties in that regard are kept open.

9. Rule is partly made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)