

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 28018 OF 2015

AADHAAR WHOLESale TRADING
AND DISTRIBUTION LTD. AND ANR.

...Petitioners

Versus

THE STATE OF MAHARASHTRA
AND ANR.

...Respondents

....

Mr. Akshay Kulkarni i/b. A.M. Kulkarni, Advocate for the
Petitioners.

Ms. Gauri Rao, AGP, for Respondent Nos.1 and 2 – State.

....

CORAM : R. G. KETKAR, J.

DATE : 5th FEBRUARY, 2016

P.C.

1. Heard Mr.Akshay Kulkarni, learned Counsel for the
petitioners and Ms. Rao, learned AGP, for respondent Nos.1 and
2 – State, at length.

2. Rule. Ms. Rao, waives service on behalf of the
respondents. At the request and by consent of the parties, Rule
is made returnable forthwith and the Petition is taken up for
final disposal.

3. By this Petition under Article 227 of the Constitution of

India, the petitioners have challenged the judgment and order 15.12.2015 passed by learned Joint Civil Judge, Senior Division at Sangli below Exh.52 in Special Civil Suit No.43 of 2008. By that order, learned trial Judge rejected the application made by the petitioners, hereinafter referred to as the plaintiffs, seeking permission to lead secondary evidence in respect of documents mentioned in para-2 of the application at Exh.52.

4. Mr. Kulkarni submitted that learned trial Judge rejected the application on the ground that the secondary evidence cannot be admitted without non production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided in Section 65 of the Indian Evidence Act, 1872 (for short, 'Act').

5. The plaintiff filed application at Exh.52 inter alia praying for permission to lead secondary evidence in respect of following documents :

- 2.1 The copy of Power of Attorney issued by Godrej Agrovat Ltd in favour of Shri Vinay Balkrushna Sakpal, dt. 11.3.2005.
- 2.2 The copy of letter issued by Tahsildar, Taluka – Miraj to Godrej Agrovat Ltd., dt. 12.2.2007.
- 2.3 The copy of reply letter issued by Godrej Agrovat

Ltd., through its Advocate to Tahsildar, Taluka – Miraj, dt. 17.2.2007.

2.4 The copy of demand notice issued by Tahsildar, taluka – Miraj to Godrej Agrovat Ltd., dt. 4.2.2008.

2.5 The copy of reply letter issued by Godrej Agrovat Ltd., to Tahsildar, Taluka – Miraj, dt. 13.2.2008.

2.6 The copy of demand notice issued by Tahsildar, taluka – Miraj to Godrej Agrovat Ltd., dt. 21.2.2008.

2.7 The copy of latest property extract of C.T.S. No.43.

6. In para-3 of the application, it is asserted that due to the change in the management, office staff, the original copy of the documents, other records mentioned in para-2 have been lost, not found, misplaced. The plaintiff has taken efforts to search the documents but they are not found. The plaintiff also filed application under Order XII Rule 3A of CPC at Exh.45, but, the defendants denied all the documents by filing say. In other words, the plaintiffs came out with a case that the documents are lost.

7. On behalf of the respondents reply was filed on 20.8.2015 opposing the application. Perusal of the impugned order shows that learned trial Judge rejected the application on technical ground that the plaintiff has not stated from the custody of earlier company or from the staff of the present

company the POA has been lost / misplaced.

8. In my opinion, learned trial Judge should have allowed the application and granted liberty to the plaintiffs to lead secondary evidence subject to proof of contents thereof. In view thereof, the impugned order dated 15.9.2015 is set aside. Application at Exh.52 is allowed subject to the plaintiffs proving the contents of the documents mentioned in para-2 of the application at Exh.52. Rule is made absolute accordingly with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)