IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11695 OF 2015

Antoinetter Gomes and Ors ..Petitioners.
Vs
M/s J.M.Constructions .. Respondents

Mr. Y.S.Jahagirdar, Senior Advocate i/b Ms Ranjana Parikh, Advocate for Petitioners.

Mr. Charles J. De Souza, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 12/08/2016

PC:

1. Heard Mr. Y.S. Jahagirdar, learned senior counsel for the petitioners and Mr. Charles De Souza, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 24.3.2015 passed by the learned trial Judge below Exhibit 253 in R.A.E. Suit No. 710/1152 of 2005 as also the judgment and order dated 24.8.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No. 136 of 2015. By these orders, the Courts below rejected the application made by the defendants for recalling PW 1-Jitendra Mehta for further cross examination for production of Income tax returns by Income-tax

Authorities as per the liberty granted by this Court vide order dated 25.7.2012 passed in Writ Petition No. 8047 of 2011.

3. In support of this petition, Mr. Jahagirdar submitted that while disposing of Writ Petition No.8047 of 2011, this Court granted liberty to the defendants to make an application for issuance of witness summons to the Income Tax Authority. He submitted that during the course of cross examination, witnesses of the plaintiffs have not produced the Income tax records prior to five years of 2006 by falsely alleging that the said record is with their Chartered Accountant and are unable to produce the same. He submitted that the plaintiffs have produced incomplete copy of Income tax returns for the year 2006-2007 and have refused to produce the documents on pretext of pending inquiry before Enquiry Officer. He, therefore, submitted that it is necessary to recall PW 1-Jitendra Mehta for further cross examination.

4. On the other hand, Mr. De'Souza supported the impugned orders. He invited my attention to paragraphs 1 and 6 of the trial Court's order and submitted that the Income Tax Officer has produced the document as per list Exhibit 313. Those documents are admitted by the plaintiffs by making endorsement on the said list. In paragraph 6, the learned trial Judge has observed that PW 1 Jitendra Mehta has fairly admitted Income Tax Returns

produced by the Income Tax Officer. He, therefore, did not find any relevancy to recall PW 1 Jitendra Mehta for cross examination on those documents of Income Tax Returns.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. For the reasons recorded in paragraph 6 of the trial Court's order as also having regard to the fact that the documents produced by the Income- tax Officer as per list Exhibit 313, the plaintiffs have admitted by making endorsement on the said list, I do not find any case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)