

Mr. Uday Bobade a/w. Mr. Akshay Bobade i/b. Mr. Bharat Punekar for
Petitioner.
Ms Pallavi A. Kulkarni i/b. A. R. Bamne & Co. for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 16, 2016

Heard Mr. Bobade, learned Counsel for petitioner and Ms Kulkarni, learned Counsel for respondent No.2 at length. Mr. Bobade orally applies for leave to delete respondent No.1 / defendant No.1 on the ground that it has not participated in the trial Court. On the motion made by Mr. Bobade, leave to delete respondent No.1 is granted. Amendment shall be carried out forthwith. Rule. Ms Kulkarni waives service for respondent No.2. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 08.11.2016 passed by the learned Principal Judge, Bombay City Civil Court, Greater Bombay in Notice of Motion No.3393 of 2016 in Small Cause Suit No.6529 of 2004. By that order, the learned trial Judge has dismissed the Motion taken out by the plaintiff for proving the documents at serial Nos.4, 7, 8 and 12 filed

along with the compilation of documents as the same were not exhibited at the relevant time on the ground that they are photocopies.

3. Documents at serial No.4 are - (i) statement of Vijaya Bank, Poonam Chambers, Worli, Bombay 400 018 and (ii) statement of State Bank of India of Worli Branch. Mr. Bobade submitted that the photocopies of the statements were produced on record. Plaintiff has now obtained certified copy of the statements of the respective Banks and the respective Banks have certified the statements. He submitted that the learned trial Judge failed to appreciate that these documents are admissible under Bankers Book Evidence Act, 1891. The learned trial Judge should have permitted plaintiff to produce the certified copies of the bank statements subject to the proof of contents.

4. As far as document at serial No.7 is concerned, that is the letter addressed by the plaintiff to the Solicitors of Bank of India. He submitted that the original of the said document is in possession of the defendant No.2. The learned trial Judge disallowed the production on the ground that plaintiff did not seek leave to lead secondary evidence in respect of the document at serial No.7. He submitted that the learned trial Judge should have allowed production of this document subject to the proof of contents thereof.

5. As far as the document at serial No.8 is concerned, that is the certified copy of affidavit of claim of the plaintiff who was defendant No.3 before the Debt Recovery Tribunal (D.R.T.) at Bombay. Document at serial No.12 is the certified copy of the Hundi issued by the D.R.T. As these are the certified copies issued by the D.R.T., the learned trial Judge should have permitted production of these documents subject to proof of contents thereof.

6. On the other hand, Ms Kulkarni supported the impugned order. As far as documents at serial No.4 is concerned, she submitted that plaintiff had examined witness and during the course of his evidence, he did not produce these documents. The learned trial Judge was, therefore, justified in disallowing production of document namely, bank statements at serial No.4. As far as the document at serial No.7 is concerned, she submitted that the plaintiff should have sought liberty to lead secondary evidence. In any case, the said letter is addressed to the Solicitors of Bank of India and not to the defendant No.2, Bank of Baroda. The said document is not with defendant No.2. The learned trial Judge was, therefore, justified in disallowing production of document at serial No.7.

7. As far as the documents at serial No.8 and 12, and more particularly document at serial No.12 is concerned, she submitted that certified copy was obtained as far as back in the year 2004 and the said document was not produced during the evidence of plaintiff's witness. The document was produced only in the year 2016 without any sufficient cause. She, therefore, submitted that no case is made out for interference with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As far as bank statements at serial No.4 are concerned, plaintiff has produced certified copies of the bank statements from Vijaya Bank and State Bank of India. It is evident from record that plaintiff had produced photocopies of these statements on record. Plaintiff wants to show that amount due and payable by the plaintiff to the defendant No.1 was already paid by cheques. In my opinion, as these are the certified copies issued by the respective Banks, the learned trial Judge should

have allowed production of the bank statements subject to proof of contents thereof. By not permitting production, plaintiff will be deprived from proving its case about payment made by plaintiff to defendant No.1 that too by way of cheques.

9. As far as the document at serial No.7, which is the reply given by the plaintiff to the Solicitors of Bank of India, is concerned, the learned trial Judge instead of disallowing this document, should have permitted plaintiff to produce this document subject to proof of contents thereof.

10. As far as the documents at serial No.8 and 12, which are the certified copies issued by D.R.T., are concerned, the learned trial Judge should have permitted the plaintiff to produce these documents subject to proof of contents. In my opinion, the learned trial Judge was not justified in dismissing the Motion on the ground that plaintiff did not avail opportunity of leading secondary evidence or that it did not establish documents at serial No.4 by summoning the witness of the concerned Bank. Plaintiff can still avail this opportunity for proving the contents of these documents. In view thereof, impugned order dated 08.11.2016 deserves to be set aside and is accordingly set aside thereby allowing Notice of Motion permitting the plaintiff to produce documents at serial No.4, 7, 8 and 12 subject to the proof of contents thereof. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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