

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7695 OF 2016

Jyoti Mohansingh Hatu and Others

..PETITIONERS

VERSUS

Tulashiram Mannusingh Pakal and Another

..RESPONDENTS

....
Mr. S.S. Kulkarni, Advocate for petitioners.

Mr. B.R. Kedar, Advocate for Respondent No.2.

....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORDER :

1. The petitioners are aggrieved by the order dated 28th June, 2016 passed by the Trial Court below application Exhibit 61 thereby refusing to accept the request of the petitioners/original plaintiffs to recall the first witness of Defendant No.2 for further cross-examination

2. The learned Counsel for the petitioners submits that the cross-examination of the first witness of Defendant No.2 was already completed on 29th January, 2016. The issue is as regards the Batai Patrak which is the cause of action. The said witness admitted in cross-examination that the original Batai Patrak is not placed on record and he is deposing on the basis of a photostat copy of the Batai Patrak.

3. He further submits that the original Batai Patrak was placed on record through the second witness of Defendant No.2. Thereafter, the Trial Court has granted exhibit number to the Batai Patrak and has noted that the said document is proved by Defendant No.2. He further submits that the first witness of Defendant No.2 needs to be cross re-examined on the Batai Patrak.

4. The learned Counsel for the respondents/Defendant No.2 submits that the Batai Patrak has been placed on record and the same has been proved through the examination-in-chief of the second witness of Defendant No.2. The said witness is yet to be cross examined by the petitioners. He further submits that the remark of the Court on the original Batai Patrak is that the said document has been proved through the examination-in-chief of the second witness of Defendant No.2. The petitioner would always be at liberty to cross-examine the said witness because he is in the witness box awaiting the cross-examination.

5. It is trite law that the documents, unless admitted, are to be proved by leading evidence. There are modes of proving a document through such evidence. If the second witness of Defendant No.2 has proved the document through examination-in-chief, it would be for the petitioners to cross-examine the said witness in a manner as it may deem appropriate. For the said purpose

and more so, when the first witness of Defendant No.2 has not dealt with the original copy of the Batai Patrak, the Trial Court was right in refusing permission to the plaintiff to recall the first witness of Defendant No.2 and resort to a further cross-examination.

6. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits, is therefore dismissed.

(RAVINDRA V GHUGE, J.)

SSD