

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

913 WRIT PETITION NO. 515 OF 2017

INDUBAI MAHADEO MOKASHI,
THROUGH GPA MAHADEO DNYANOBA MOKASHI
VERSUS
SATISH MOHIPATRAO VARALE

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Advocate for Petitioner : Mr. Parag Vijay Barde.

Advocate for Respondent : Mr. Vijay R. Langhe & Mr. P. V. Langhe.

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CORAM : **V. K. JADHAV, J.**

DATE : 16th November, 2017.

ORDER:

. Being aggrieved by the order below Exhibit 108 dated 19th September, 2016 passed by the 3rd Joint Civil Judge Junior Division, Rahata in Regular Civil Suit No.289 of 2012, the original Plaintiff has approached to this Court by filing the present writ petition.

2 Brief facts giving rise to the present writ petition are as follows:

The Petitioner / original Plaintiff has instituted a suit for recovery of money alongwith interest from the Respondent. Pending hearing of the suit, the Respondent / original Defendant filed an application Exhibit 108 seeking permission to lead secondary evidence with regard to a photostat copy of the document at serial No.2 of the list Exhibit 99.

The learned Judge of the Trial Court by impugned order allowed the said application. Hence, this writ petition.

3 The learned counsel for Petitioner submits that the Petitioner has denied the existence of the said document. The learned counsel submits that the conditions as contemplated under the provisions of Section 65(a) of the Indian Evidence Act are not fulfilled. Further, the Respondent / Defendant has produced the photostat copy of the document in question and as such, the Trial Court has committed grave error in allowing the application Exhibit 108. The learned counsel submits that so far as the observations made in Criminal Appeal No.14 of 2006 by the Additional Sessions Judge, Kopergaon are concerned, the Petitioner / Plaintiff has challenged the said order of acquittal and this Court vide order dated 14th June, 2016 in Criminal Application No.4181 of 2015 has granted the leave to file appeal against the acquittal and further admitted the appeal on the ground that the agreement referred in the said case instituted on stamp paper of Rs.5/- and the photostat copy was produced by the accused after the evidence of complainant was over.

4 The learned counsel for Respondent / original Defendant submits that the Respondent / Defendant has stated by way of

pleadings that on 4th December, 1998, an agreement has been executed in between the husband of Petitioner / Plaintiff and the Defendant in presence of two witnesses and in fact, the money transaction was different and in lieu of said money transaction, the Respondent / Defendant has handed over a blank cheque to the husband of the Petitioner and the same has been misused. The learned counsel submits that in the aforesaid criminal case, in the cross-examination of the Respondent / Defendant (Accused in the criminal case), the Petitioner / Plaintiff (Complainant in the criminal case) has referred the said document and therefore, though it was a photostat copy, exhibited by the Trial Court. The learned counsel submits that the notice has been duly served on the Petitioner / Plaintiff to produce the original before the Court and even then the Petitioner / Plaintiff has not produced the original for the reason best known to her. Thus, by taking recourse to the provisions of Section 65(a) of the Indian Evidence Act, the learned Judge of the Trial Court has rightly allowed the application Exhibit 108. No interference is required. There is no substance in the writ petition.

5 On perusal of the written statement filed by the Respondent / Defendant, it appears that in para 11 of the written

statement, the Respondent / Defendant has raised a specific pleading to the effect that the agreement came to be executed in between the husband of Petitioner / Plaintiff and the Defendant in presence of two witnesses. As per said transaction, the Respondent / Defendant has paid the entire amount by another cheque to the husband of the Petitioner / Plaintiff. It has been specifically pleaded that the Petitioner / Plaintiff and her husband misused the blank cheque, which has been kept as security in respect of the transaction, which has taken place with the husband of Petitioner / Plaintiff. So far as the judgment and order of acquittal passed by the learned Additional Sessions Judge, Kopargaon in Criminal Appeal No.14 of 2006 is concerned, the observations made therein are hereby considered to the limited extent that the present Respondent / Defendant has not only produced the photostat copy of the agreement for which the permission is sought to lead the secondary evidence in this suit, but also examined the attesting witness of the said agreement and further the photostat copy of the said agreement since tendered in the cross-examination of the Respondent / Defendant herein, the Trial Court has exhibited the said document.

to seek permission to lead secondary evidence in terms of clause (a) of Section 65 of the Indian Evidence Act. I do not find any fault in the impugned order passed by the learned Judge of the Trial Court below Exhibit 108. There is no substance in the writ petition. Hence, the following order:

ORDER

The writ petition is hereby dismissed. In the circumstances, there shall be no order as to the costs.

[V. K. JADHAV, J.]

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