

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

WRIT PETITION NO. 12702 OF 2016

RAJESH NATWARLAL SHAH
VERSUS
VASUDEO JAGANNATH AGARAWAL AND OTHERS

...
Advocate for Petitioner : Ms.Ansari A.N.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th January, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 14.11.2016 passed by the Trial Court below Exhibit-111 by which the Demand Draft dated 03.07.2007 has not been exhibited and is not to be read in evidence as it is not a public document and there are no pleadings in respect of the same in the Written Statement.

2 The Petitioner submits that RCS No.246/2010 has been initiated by the Plaintiff seeking eviction of the Petitioner/ Defendant No.2 from the suit property on the ground of being a Defaulter as he has failed to pay the rent. The grievance is that the Trial Court has, by the impugned order, rejected the application Exhibit-111, thereby refusing to grant exhibit number to the Demand Draft and declining to read the Demand Draft in evidence though permission to file the Demand Draft has been

granted.

3 It is strenuously submitted that when the Petitioner filed his Written Statement on 11.07.2007, he has not put forth any pleadings about the said Demand Draft. After he found the Demand Draft, he moved an application on 05.11.2016 seeking leave to produce the document and exhibit number being granted to the said document so as to read it in evidence. No loss or harm of any nature would be caused to the Plaintiff if this is permitted since the Demand Draft would indicate the truth. It is further stated that if the Demand Draft is not to be read in evidence, the Trial Court should not have allowed the Petitioner to produce the said document.

4 I have considered the submissions of the learned Advocate for the Petitioner and with her assistance, I have gone through the petition paper book.

5 The law of pleadings has not become obsolete. The principle is “first plead and then prove”. The entire recording of evidence in RCS No.246/2010 has been concluded. The litigating sides have closed their evidence. At this stage, the Petitioner seeks to produce the document which is termed as a Demand Draft. It is in fact a banker's cheque and not

a Demand Draft. So also, a xerox copy of the said document has been placed before the Trial Court and the original has not been produced.

6 It cannot be ignored that unless a document is filed in original form, it cannot be exhibited. It also requires no debate that mere grant of exhibit number does not mean that the document has been proved. The said document has to be proved through pleadings and oral evidence. At this stage in the matter, there is not a whisper about the said document, either Demand Draft or Banker's cheque, in the Written Statement filed by the Petitioner. There is no contention that the said document was tendered to the land-lord by way of payment of rent and the land-lord has refused to accept the said document.

7 The Trial Court has refused to grant exhibit number and has refused to read the document in evidence for the following four reasons:-

- (a) The document is a xerox copy and not the original.
- (b) There is no pleading in the Written Statement and no case has been put forth by the Petitioner that by the said document the Petitioner had sought to pay rent to the land-lord and he has refused to accept it.
- (c) The entire recording of evidence in the matter is already concluded.

- (d) There is no reference to the said document in the entire oral evidence of the litigating sides.

8 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous.

9 The Petitioner has also challenged the order dated 14.11.2016 by which his application Exhibit-112 seeking amendment to the Written Statement has been rejected. It was contended in the application that considering the Demand Draft, which is being sought to be produced, the Petitioner desires to introduce an amendment to contend that *"That in the year 2007 and on dated 03.07.2007 the said Defendant Natwarlal Shah send rent of the suit premises to the said Plaintiff through the account payee Demand Draft No.75034 of the UTI Bank Limited Jalgaon of rupees 12000/- for the rent of the suit premises or godown on the name of Shree Jagannath Ganeshram Agrawal. So time to time the said defendants try to give rent to the plaintiff but they intentionally not accepted."*

10 The grievance is that the Trial Court should have allowed the application since a vital document was found by the Petitioner and that was sought to be produced by introducing the amendment to the Written

Statement.

11 It is apparent that recording of oral evidence in the suit has been concluded and evidence has been closed. The incident of 2007 is sought to be introduced through the Written Statement after 09 years, is the conclusion drawn by the Trial Court. Considering the principle of due diligence, the Petitioner could have made efforts to amend it's Written Statement before the commencement of the trial or at the earliest.

12 In the entire application Exhibit-112, the Petitioner has nowhere stated as to what were the circumstances leading to the discovery of the said document and where is the original copy of the said document. A xerox copy of the document cannot be believed and is unacceptable by way of evidence. An amendment sought on the basis of the xerox copy of the document and that too after the entire recording of evidence was over, in my view, has rightly led the Trial Court to reject the said application Exhibit-112. On this count as well, this petition fails.

13 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed.