

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.767 OF 2015

Naiknavare Developers Pvt. Ltd.

...Petitioner

Versus

Pune Municipal Corporation & Ors.

...Respondents

WITH
CIVIL APPLICATION NO. 697 OF 2016
IN
WRIT PETITION NO. 767 OF 2015

M/s. Naiknavare Developers Pvt. Ltd.

...Applicant

Versus

Pune Municipal Corporation & Ors.

...Respondents

.....

Mr.R.D.Soni a/w. Mr. Sachin Khandagale i/b. Ram & Co. for the
Petitioner.

Mr. Chaitanya Nikte for Respondent Nos. 2 and 3.

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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 25, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, the Petition is heard finally and disposed of at the stage of admission.
2. This Petition is directed against the orders dated 18.06.2013 and 08.10.2014 passed by the learned Civil Judge, Junior Division, Pune, thereby rejecting the application of the petitioner seeking

permission to lead secondary evidence. From the order dated 18.06.2013, it appears that earlier the petitioner, who is original plaintiff had made application to lead secondary evidence. However, the said application was rejected holding by the trial Court that the documents are registered documents so certified copies are to be produced. The petitioner/ original plaintiff had filed second application seeking permission to lead secondary evidence for the same documents, wherein the petitioner/ original plaintiff had mentioned that he tried to get these documents, but the records are not traceable and therefore, he may be given permission to lead secondary evidence. The said application was rejected on 08.10.2014 without considering the facts that the petitioner has acted upon the first order, and has tried to obtain certified copies of those documents. An error committed by the learned Judge is apparent.

3. The learned counsel for the respondents submits that existence of the documents is condition precedent to allow the application to lead secondary evidence. However, in the present case, the petitioner has not proved that the documents, which are in existence, are the original documents.

4. The learned counsel for the petitioner has pointed out that in the order, the trial Court has not given any reasoning to that effect and the petition be allowed.

5. It is made clear that the controversy in respect of veracity of documents, approval to the contents of documents and existence of the documents is a matter of appreciation of those documents.

6. Rule is made absolute in terms of prayer clause (a) and (b). The trial Court to proceed with the matter and the parties to co-operate. The matter is already expedited.

7. The learned counsel for the petitioner does not press Civil Application No. 697 of 2016. Hence, it is disposed off with a liberty to move necessary application before the trial Court because the Corporation is not a party in the suit. He further submits that liberty may be granted to take necessary steps in the trial Court. In view of above, Writ Petition is disposed off.

8. In view of disposal of the Writ Petition, nothing survive in Civil Application and stands disposed off.

(MRIDULA BHATKAR, J.)