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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 2110 OF 2017

Kashan Khalid Ghaswala & Ors.

...Petitioner

VS

M/s Mahendra Builders & Ors.

...Respondents.

.....

Mr S.A.Ahmed for the Petitioner.

Mr P.S.Dani, Sr. Counsel a/w Mrs Vidya Khatu for Respondent
No.1.

.....

**CORAM : B. P. COLABAWALLA, J.
JULY 17, 2017.**

P.C.:

Rule. The Respondents waive service. Rule made
returnable forthwith and heard finally.

2 This Writ Petition has been filed taking an exception
to the order dated 15th November, 2016, passed below Exh.277.
This application (Exh.277) was filed by Defendant Nos.5 to 8 to
allow them to file additional affidavit of evidence along with the
documents, namely, a certified copy of the registered Deed of
Assignment dated 19th October, 2000. This application of

Defendant Nos.5 to 8 was rejected by the Trial Court, mainly on the ground that this document does not find reference either in the Written Statement or the additional Written Statement filed by Defendant Nos.5 to 8.

3 On going through the papers, I find that Defendant Nos.5 to 8 have filed their affidavit of evidence dated 20th April, 2015. In paragraph 12 of this affidavit of evidence, it is specifically stated that Defendant Nos.5 to 8 be permitted by the Trial Court to lead secondary evidence with reference to the registered Deed of Assignment dated 19th October, 2000 numbered as document No.5 in the said affidavit of evidence. It is further stated that on applying before the office of the Sub-Registrar to obtain a certified copy of the registered Deed of Assignment dated 19th October, 2000, Defendant Nos.5 to 8 shall produce the same before the Trial Court.

4 Today, the learned advocate appearing on behalf of the Petitioner submitted that a certified copy of the registered Deed of Assignment dated 19th October, 2000 is now available with the Petitioners and all they seek to do is to bring the same

on record by filing an additional affidavit of evidence. It is this application that was rejected by the Trial Court, and according to the learned advocate appearing for the Petitioner, wrongly.

5 On the other hand, Mr Dani, learned Senior Counsel appearing for Respondent No.1 submitted that considering the fact that admittedly this document does not find any reference in the Written Statement, the Trial Court correctly rejected the application filed by Defendant Nos.5 to 8 to bring the registered Deed of Assignment dated 19th October, 2000 on record.

6 Having heard both the learned counsel for the parties, I find that the request of the Petitioner is only to replace document No.5 in its affidavit of evidence with the certified copy of the registered Deed of Assignment dated 19th October, 2000. This being the request, I cannot see why the application of the Petitioner stood rejected by the Trial Court. In these circumstances, I find that the impugned order cannot be sustained and is hereby quashed and set aside. It is however clarified that Respondent No.1 (original Plaintiff before the Trial Court) shall be entitled to take all objections with reference to

exhibiting the said certified copy of the registered Deed of Assignment dated 19th October, 2000. This order should not be construed to mean that the Trial Court is directed to exhibit the said document.

7 Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)