

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

WRIT PETITION NO.3554 OF 2017

Cyrus Keki Balsara .. Petitioner
Vs.
M/s.Ghatlia Textile & Engraving Works & Ors. .. Respondents

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Mr.Vishal Kanade a/w Ms.Shlesha Sheth & Saahil Bijliwala i/b FZB
& Associates for the Petitioner.

Mr.G.S. Godbole a/w Ms.Kalambi i/b Dastur Kalambi & Associates
for Respondent Nos.1 and 2.

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CORAM : M.S. SONAK, J.

DATE : 24 AUGUST 2017.

P.C. :

1. Heard learned counsel for the parties.
2. Challenge in this petition instituted under Article 226 of the Constitution of India, impugned orders by which the learned Trial Judge has refused to mark certain documents in evidence of Article X-4.
3. Upon due consideration of Mr. Kanade's submission, I am not satisfied that the case warrants interference. No case has been made out to interfere with the impugned orders in the extraordinary jurisdiction. No doubt, the petitioner, is required to be given liberty to challenge the impugned orders, by invoking the principle of Section 105(1) of Code of Civil Procedure, 1908, in case, the trial court, ultimately decides against the petitioner and

the petitioner chooses to institute an appeal against such decision or even if the petitioner chooses to institute any cross-objections in an appeal which may be instituted by the respondent against the final decision of the learned Trial Judge.

4. However, in the peculiar facts and circumstances of the present case, it will be appropriate to observe that the respondents shall be at liberty to cross-examine the witness Mr. Rizwan S. Dhalla who was examined to produce the documents at Article X-4. Such cross-examination by itself, may not be taken as admission of the documents or its deemed marking. This liberty is granted in order to obviate the possibility of the remand, should the appellate court agree with the petitioner's submissions that such documents were infact required to be marked in evidence. Mr. Godbole, learned counsel for the respondents has submitted that in case this position is clarified, the respondents will cross-examine the witness without prejudice to their rights and contentions that the impugned order has been correctly made.

5. Further, it is obvious, that the liberty as aforesaid is not intended to reflect upon the evidentiary value or relevance of the documents of Article X-4. All these matters are to be determined at the appropriate stage at the appropriate forum in accordance with law. The impugned order is not being interfered with only on the ground that a case has warranting interference under Article 227 of the Constitution not been made out. Such non-interference,

ought not to be construed as some sort of tacit approval of the impugned order in case, any occasion arises for challenging to the impugned order in the court of appeal.

6. With the aforesaid clarifications and liberty, this petition is disposed of.

7. Parties to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)