

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 852 OF 2017

M/s. Deve Paints Ltd.	...	Petitioner
Vs.		
Ramona Jaideep Garware & Anr.	...	Respondents

Mr. J.A.Udaipuri i/b. Sweedal Karkada, Advocate for the petitioner.
Mr. H.H.Ponda, Advocate for respondent No.1.
Mr.S.R.Agarkar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 29th March, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner herein happens to be the original complainant in C.C. No.95/SW/2005 pending before the Addl. Chief Metropolitan Magistrate, 40th Court at Girgaum, Mumbai.

3. Being aggrieved by the order dated 17.11.2016, the petitioner has filed the present petition.

4. The petitioner herein had filed an application before the Metropolitan Magistrate requesting the Court to take the certified true copies of Form No. 8 and Form No.23 issued by the Registrar of Companies and exhibit the same and further after exhibition, read the same

in evidence as contemplated under Section 397 of the Companies Act, 2013 i.e. Section 610(3) of the Companies Act, 1956. It is pertinent to note that the said application was filed after recording of substantive evidence of the Managing Director of the company and that the witness was not confronted with the said documents i.e. Form No.8 and Form No.23. Needless to say that the Managing Director of the said company had not been given any opportunity to verify the genuineness as well as the correctness of the contents of the said documents. The learned Magistrate has rejected the application filed by the complainant and accept the same as primary evidence in the said proceedings.

5. It is clear that the proceedings have to be conducted in accordance with the Indian Evidence Act and in fact, the prayer in the application filed by the complainant below Exhibit 217 was misplaced.

6. The learned counsel for the respondent has drawn attention of this Court to the application filed by the complainant wherein it is stated that the complainant does not desire to examine any witness to prove the genuineness and correctness of the said documents and they should be exhibited by the Court. Be that as it may, the learned counsel for the petitioner has fairly admitted that the application was not happily worded and, therefore, seeks liberty to file a fresh application recalling the witness

to prove the disputed documents. Liberty as prayed for is granted in the interest of justice. The learned Magistrate shall consider the application on its own merits and decide the same in accordance with law, after hearing the contesting party. The applications be decided in accordance with the provisions of the Indian Evidence Act.

7. Rule is made absolute in the above terms and stands disposed of.

(SMT. SADHANA S.JADHAV, J.)