

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6953 OF 2017

Pushpa Navin Delwadia ... Petitioner
Vs.
Ranjana Dharmaraj Chinchavle & Ors. ... Respondents

Mr. Tejas Bhide, Advocate for the petitioner.
Mr. Pravin Sawant a/w. Ms. Anita Gavkar, Advocate for respondent
nos. 1 to 4.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 7th July, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, this Writ
Petition is finally heard finally and decided at the stage of admission.

2. In this Writ Petition, the order dated 31st March, 2016 passed
by the learned Judge of the City Civil Court, Greater Mumbai in
Short Cause Suit No. 7536 of 2006 thereby refusing to accept the
documents at sr. nos. 3 to 11, i.e., photocopies of the cheques and
demand drafts which the petitioner/plaintiff wanted to bring by way of
secondary evidence.

3. Perused the impugned order. The order passed by the learned
Judge of City Civil Court is well reasoned and nothing can be faulted

with. However, the learned counsel for the petitioner today produces the entire correspondence between him and the banks where he has written letters to four banks from November, 2015, i.e., prior to the impugned order. The correspondence discloses that four banks have sent letters in June 2017 that they preserve their record only for 10 years and the disputed documents asked for are of 20 years old record, hence they cannot provide the documents. The petitioner/plaintiff ought to have produced the letters written by him to the banks demanding this information.

4. As the letters written by the petitioner to the banks were not produced before the trial Court, the trial Court has rightly concluded that no evidence is brought on record laying foundation for leading secondary evidence as contemplated under section 65 of the Evidence Act. However, in all fairness, as this correspondence exists and it is to be brought on record for adjudication, the impugned order is set aside to enable the party to lead secondary evidence. The petitioner is directed to produce all these correspondence before the trial Court. The learned Judge is requested to consider the correspondence and pass appropriate order on the point of leading secondary evidence.

5. Rule made absolute accordingly.
6. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)