

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11702 OF 2015

Ashokkumar Bhagchand Shah
And Ors

...Petitioners

Versus

Ramniklal Bhagchand Shah (since Decd)
Through LRs

...Respondents

....

Mr.P.B. Shah i/b. Kayval P. Shah, Advocate for the Petitioners.
Mr.Sagar Kasar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 01st MARCH, 2017

P.C.

1. Heard Mr.P.B. Shah, learned Counsel for the petitioners and Mr.Sagar Kasar, learned counsel for respondent, at length.
2. Rule. Mr.Kasar waives service on behalf of the respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 15.1.2014 passed by

the learned Jt. Civil Judge, Senior Division, Malegaon below Exhibit-191 in Special Civil Suit No.50/2007. By that order, the learned trial Judge rejected the application made by defendant No.2 for producing original documents on record.

4. In support of this Petition, Mr. Shah submitted that on behalf of the defendants, defendant No.2 filed affidavit of examination-in-chief on 15.1.2014. He has referred to the documents in his examination-in-chief. On the same day, he also filed list at Exhibit-192 (page-58A of the petition) enclosing as many as five original documents. He submitted that the learned trial Judge rejected the application on the ground that no satisfactory explanation for non-production of the documents at proper stage are given and hence the application is liable to be rejected. He submitted that the documents were produced on the same day when defendant No.2 filed examination-in-chief. He, therefore, submitted that the documents may be taken on record as they are original documents.

5. On the other hand Mr. Kasar invited my attention to paragraph-5 of the impugned order dealing with the conduct of the defendants. He further submitted that the cross-examination of the defendant is already over and the matter is posted for final

arguments. He, therefore, submitted that as the application is made without giving particulars and that too belatedly, no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is evident from record that defendant No.2 filed affidavit in examination-in-chief on 15.1.2014 referring to the documents therein. On the same day, he filed list of documents at Exhibit-192 (page-58A of the petition) enclosing therewith original documents. As the defendants intend to produce original documents, the learned trial Judge should have marked them as exhibits subject to proof of contents thereof. In view thereof, the impugned order is modified and the original documents produced along with list at Exhibit-192 (page-58A of the Petition) shall be taken on record. The learned trial Judge will, however, consider whether the contents of these documents are proved or not while deciding the suit. Subject to this modification, the petition is disposed of. Rule is made absolute in aforesaid terms. No order as to costs. Order accordingly.

(R. G. KETKAR, J.)