

Anand

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

WRIT PETITION NO.13082 OF 2016

Mohammed Ismail Dawood Sahib Mulla .Petitioner

Vs.

Hindustan Petroleum Corporation Ltd. & anr. .Respondents

Mr.Rajkumar Mishra i/b. Ms Jyoti D. Joshte, Advocate, for the
Petitioner

Ms Ashiya Shaikh i/b. M/s. Rustomji & Ginwala, Advocate, for the
Respondent No.1

Ms Vaishali Nimbalkar, AGP, for the Respondent No.2 - State

CORAM : R.G.KETKAR, J.

DATE : 15.03.2017

P.C.

. Heard Mr.Mishra, learned counsel for the Petitioner, Ms
Shaikh, learned counsel for the Respondent No.1 and Ms Vaishali
Nimbalkar, AGP, for the Respondents No.2.

2. Rule. Ms Shaikh waives service on behalf of the
Respondent No.1. Ms Nimbalkar waives service on behalf of the
Respondent No.2 – State. 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 Petitioner, hereinafter referred to as 'Plaintiff' has challenged the Judgment and Order dated 07.07.2016 passed by the learned C.J.J.D., Khalapur below Exh.37 in R.C.S.No.25 of 2015. By that order, the learned trial Judge rejected the Application filed by the Plaintiff under Order XIII, Rules 4(1) and 7 of the Code of Civil Procedure, 1908 (For short "CPC") r/w. Sections 62 to 66 of the Indian Evidence Act, 1872.

4. The Plaintiff filed an Application for marking (i) the original Power of Attorney dated 22.05.2014, (ii) office copy of termination notice dated 28.11.2014 and (iii) true & authenticated copy of the Lease Deed dated 24.11.1966 as Exhibits. The learned trial Judge rejected the Application on the ground that except Power of Attorney, the Plaintiff did not produce the original Lease Deed dated 24.11.1966 as also termination notice dated 28.11.2014. The learned trial Judge was also of the view that from the perusal of the cross-examination, it seems that these documents were not confronted to the witness as also no question was put to the said witness in respect of the contents of the

documents.

5. In support of this Petition, Mr. Mishra submitted that in the impugned Order, the learned trial Judge has noted that the Plaintiff has produced the original Power of Attorney dated 22.05.2014. Ms Shaikh also fairly did not dispute the fact that the Plaintiff has produced the original Power of Attorney. In view of this, in my opinion, the learned trial Judge ought to have marked the original Power of Attorney as exhibit.

6. As far as Lease Deed 24.11.1966 is concerned, in examination-in-chief of the Plaintiff's witness, Sultan Sirajuddin, has specifically stated that he is producing true and authenticated copy of the Lease Deed was received from Respondent No.1 – HPCL. A perusal of the cross-examination does not indicate that the said witness was confronted with the statement made in paragraph 4 of the examination-in-chief.

7. As far as suit notice dated 28.11.2014 is concerned, that was already referred in paragraph 10 of the Plaintiff's witness. Again the statement made in paragraph 10 was not contradicted. In other words,

the statement made by the Plaintiff's witness as regards the Lease Deed dated 24.11.1966 in paragraph 4 as also termination notice dated 28.11.2014 in paragraph 10 remained unchallenged. The learned trial Judge was, therefore, not justified in not marking these documents as Exhibits.

8. Ms Shaikh relied upon the decision of the Madras High Court in the case of *K.K.Velusamy Vs. N. Palanisamy, C.R.P.(PD) Nos.3637 and 3638 of 2009 and M.P.No.1 of 2009 dated 07.04.2010*. The decision was challenged before the Apex Court. The Apex Court in *K.K.Velusamy Vs. N. Palanisamy* has partly allowed the Appeal. In view thereof, reliance placed by Ms Shaikh on that decision does not help Respondent No.1. Apart from this, Mr. Mishra submitted that once the documents are marked, the Plaintiff does not wish to lead further evidence. In view of the statement made as also for the reasons recorded hereinabove, in my opinion, the learned trial Judge was not justified in rejecting the Application. Hence, Petition is disposed of as under :-

(i) The impugned Order is set aside and the Application Exh.37 is allowed and the learned trial Judge is directed to mark Lease Deed dated 24.11.1966, termination notice dated 28.11.2014 and Power of Attorney

dated 22.05.2014 as Exhibits;

(ii) The Plaintiff shall not lead further evidence in the matter as far as these documents are concerned.

9. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)