

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

WRIT PETITION NO.2104 OF 2016

Shree Suvarna Sahakari Bank Ltd.

..Petitioner

Versus

M/s. Sahyadri Corporation and others

..Respondents

Mr. Bharat Gadhavi a/w Mr. Tejas Dande i/by Tejas Dande & Associates for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent No.9.

CORAM : R. M. SAVANT, J.

DATE : 2nd MARCH, 2017

PC.

1 The order dated 10.02.2015 passed by the Co-operative Court No.2, Pune, rejecting the application Exh.52 filed by the Petitioner for leading secondary evidence of the documents mentioned in Exh.52 which is confirmed by the Revisionary Court i.e. Co-operative Appellate Court by order dated 13.08.2015 is taken exception to by way of the above Petition.

2 The application Exh.52 has been rejected on the ground that the Petitioner has produced photocopies of the documents. It appears that the documents in respect of which the Petitioner wants to lead secondary evidence are in the custody of the police in a Criminal Case i.e. RCC No.1655 of 2010. The Petitioner had filed an application in the Court of

Learned JMFC, Pune for being furnished with the certified copies of the said documents. However the said application has been rejected by the Learned JMFC by order dated 29.07.2015 on the ground that it would not be possible to break open the sealed documents since the prosecution has not led its evidence. The said order passed by the Learned JMFC was after the order passed by the Co-operative Court rejecting the application Exh.52 and therefore the said order could not be brought to the notice of the Co-operative Court. Though the said order has been passed by the Learned Magistrate prior to the Revision Application being dismissed the Revisionary Court it seems did not take cognizance of the said order, though it is the contention of the Learned Counsel for the Petitioner that the attention of the Revisionary Court was drawn to the said order dated 29.07.2015.

3 In the facts and circumstances as above without interfering with the impugned orders, the Petitioner can be granted a liberty to file a fresh application for being permitted to lead secondary evidence in the light of the order dated 29.07.2015 passed by the Learned JMFC, Pune. If any such application is filed, the concerned Co-operative Court would deal with the same on its own merits and in accordance with law, but having regard to the mandate of Section 65 of the Evidence Act. If the said application is filed within a period of three weeks, the concerned Co-

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operative Court may decide the same expeditiously. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]