

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12042 OF 2017

The Champion India Industries Ptv Ltd	...Petitioners
<i>Versus</i>	
Sahara India Commercial Corporation Ltd	...Respondents

Mr JP Sen, Senior Advocate, *a/w Mr Ashish Kamat, Mr Vishesh M and Ms P Mehta, for the Petitioners.*
Mr JA Madane, AGP, *for Respondent No. 1-State.*
Ms Neeta Jain, *a/w Ankur Kalal, i/b Markand Gandhi & Co, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 13th November 2017

PC:-

1. **Rule.** Respondents waive service. By consent made returnable forthwith and taken up for final hearing.

2. The Writ Petition is directed against an order of 21st July 2017 in a revision application. That impugned order declined the Petitioners relief saying that all that the Petitioners (original Plaintiffs) had challenged was “procedural order”. This so-called procedural order is dated 6th April 2016, and a copy is at Exhibit A, pages 40 to 42. It only *appears* to be procedural. What it does in fact is to exclude entirely from evidence as many as nine documents

sought to be proved by the Plaintiffs. It does so, however, on grounds that are entirely unsustainable. Several documents are excluded simply on the basis that they are photocopies without any further consideration and without considering that many of these documents were undisputed. Mrs Jain for the Respondent argues that one of the documents marked as “X3” was incomplete. That may be so but that is an argument that should been noticed and considered. That is not the reason supplied in the Trial Court’s order. Another set of documents were some photographs as “X8”. The Trial Court said they were not “pleaded in evidence”. Indeed they were. Mrs Jain’s argument that they could not proved through that particular witness is another question altogether, one that has not been addressed by either of the Courts below. She may be correct in her submission and the photographs may required to be proved by the person who took them but that is not the ground for exclusion and certainly would not would not constitute a sufficient ground for an outright rejection from evidence in this fashion.

3. These orders cannot be sustained. The Appellate order is set aside. The Trial Court order is set aside to the extent that it declines to mark articles X to X8 in evidence. The Trial Court will consider these afresh and will pass a reasoned order for their exclusion if they are to be excluded from evidence. All contentions are left open.

4. Rule is made absolute in these terms. There will be no order as to costs.

(G. S. PATEL, J)