

Ms Poonam Tiwari i/b. A. A. Siddiqui for Petitioners.
Mr. Pradeep J. Thorat for Respondent No.1.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 04.10.2017 passed by the learned Judge, Court Room No.7, Court of Small Causes at Mumbai on admissibility of the documents produced along with affidavit of evidence of respondent No.1's witness.

3. In support of this Petition, Ms Tiwari submitted that along with the plaint, respondent No.1, hereinafter referred to as 'plaintiff', had annexed only one rent receipt bearing No.3393 dated 31.03.2015 showing that the rent for the month of January, February, March 2015 was Rs.120/-. She submitted that save and except rent receipt, plaintiff did not refer to any other document in the list of documents. However, along with the examination-in-chief, he produced list of documents containing several documents. She submitted that this is clearly impermissible as per Order VII, Rule 14(3) of the Code of Civil

Procedure, 1908 (for short 'C.P.C.'). She submitted that a document, which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. She submitted that in the instant case, no leave of the Court was obtained. The learned trial Judge was, therefore, not justified in marking the documents as exhibits.

4. As far as the document at Sr. No.5 is concerned, plaintiff has produced photocopies of the application forms for getting shop and establishment registration. In other words, plaintiff did not produce original documents. The learned trial was therefore, not justified in marking document at Sr. No.5 at exhibit-54. She, therefore, submitted that impugned order deserves to be set aside.

5. On the other hand, Mr. Thorat submitted that in paragraph 2 of the plaint, it is asserted that defendant No.1 is a monthly tenant of the plaintiff in respect of the suit premises. The monthly rent of suit premises is Rs.40/-. Plaintiff craved leave to refer to and rely upon rent receipts when produced. He submitted that under Order VII, Rule 14(1) as the plaintiff has relied upon the rent receipts, he is entitled to produce the same during the course of evidence. In fact defendants No.2 and 3 have admitted the documents at Sr.No.2 and 3. In so far as documents at Sr. No.1 are concerned, they are the rent receipts. Plaintiff has produced original rent receipts, which are referred by his witness in his affidavit of evidence. The learned trial Judge was, therefore, justified in marking documents at exhibit-50 collectively. As far as the document at Sr.No.4 is concerned i.e. extract of property card issued by the office of the Superintendent, Mumbai City Survey and Lad Records, the learned trial

Judge considered the submission of defendants No.2 and 3 that these documents are false, bogus, self-created and were not admitted in evidence. As these documents are public documents, the learned trial Judge exhibited Sr.No.4 as exhibit-53 reserving right to defendants No.2 and 3 to cross-examine P.W.1.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of paragraph 4 of the plaint shows that plaintiff has relied upon rent receipts. Document at Sr. No.1 are the five original rent receipts, which are referred in the affidavit of evidence. Plaintiff has also annexed one of such rent receipts along with the plaint. In view thereof, it cannot be said that the learned trial Judge has committed any error in marking rent receipt at exhibit-50 collectively. As far as the document at Sr.No.4 is concerned, as noted earlier, while marking it as exhibit-53, the learned trial Judge has reserved liberty to the defendants No.2 and 3 to cross-examine P.W.1. Likewise, in respect of Sr.No.5, the learned trial Judge has marked those documents as exhibit-54 colly. as these are referred by plaintiff's witness in his evidence. It is settled principle of law that mere marking of document, that by itself, does not mean that contents thereof are proved. Plaintiff will have to prove the documents. As far as the document at Sr.No.5 is concerned, it would be open for defendants No.2 and 3 to cross-examine the officer who had furnished documents under the Right to Information Act, 2005. It would be open for defendants No.2 and 3 to cross-examine plaintiff and his witness. In view thereof, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the

impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Minal Parab