

- Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE COURT JURISDICTION
WRIT PETITION NO.2491 OF 2018

Tajdin Kasam Mussa] Petitioner

Vs.

Sunder Dalamal and others.] Respondents

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Mr. Pradeep J. Thorat, for Petitioner.

Mr. Surel S. Shah a/w Ms. Jesal Shah i/b Dara Shah, for
Respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE : 8TH MARCH, 2018.

P.C.

Heard Mr. Thorat, learned Counsel for the petitioner and
Mr. Shah, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 24th November, 2017 passed by the learned trial Judge, Court Room No.16 below Exhibit 38 in R.A.D. Suit No.1983 of 2004. By that order, the learned trial judge rejected the application made by the petitioner (hereinafter referred to as "plaintiff") to mark documents at Sr. No. 5 and 6 of the list Exhibit 29 dated 4th December, 2014 as exhibits. Aggrieved by this decision, the plaintiffs preferred Revision Application No.14 of

2014 which was rejected by the Appellate Court on 16th February, 2018. The plaintiff challenges this order as well. Mr. Thorat states that he has referred that order in paragraph 12 of the Writ Petition and as copy was not available, he did not annex the copy to the Writ Petition. He, therefore, seeks leave to annex that order. As the Petition is pending for admission, leave to annex the copy of the order dated 16th February, 2018 is granted. Amendment shall be carried out forthwith.

3. In support of this Petition, Mr. Thorat submitted that the petitioner has instituted suit for declaration that he is a monthly tenant of defendants No.1 and 2 in respect of Garage No.4 situate on the ground floor of the building known as "Sunder Mahal", 141, Netaji Subhash Road, Mumbai – 400 020 (for short 'suit premises') and as such is entitled to protection of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The plaintiff has sought permanent injunction restraining defendants No.1 and 2 from disturbing, dispossessing him or interfering with his use, occupation and enjoyment of the suit premises without following due process of law.

4. Mr. Thorat submitted that the plaintiff has filed affidavit of examination-in-chief in November, 2014. In paragraph 26, he has referred to the letter dated 13th December, 2000 addressed by him to the Municipal Corporation of Greater Mumbai (for short 'Corporation'), 'A' Ward requesting the Assistant Assessor and Collector to furnish him the certified copy of inspection extract in respect of the suit property. By reply dated 27th December, 2000, Assistant Assessor and Collector, "A" Ward furnished him the inspection extract in respect of the suit premises as well as Shop No.4 which is subject matter of the other suit. He submitted that the plaintiff had produced list of

documents dated 4th December, 2014, Exhibit 29 where at Sr. No.5 reference is made of inspection extract furnished by the Assistant Assessor and Collector, 'A' Ward dated 27th December, 2000. At Sr. No.6, the plaintiff has referred to application dated 3rd November, 2014 along with inspection extract issued by the Assistant Assessor and Collector "A" Ward dated 24th November, 2014. By order dated 13th February, 2017, the learned trial Judge marked documents at Sr. No.5 and 6 of the list Exhibit 29 dated 4th December, 2016 as Articles on the ground that the plaintiff will have to examine the author and without examining the author, documents at Sr. No.5 and 6 cannot be exhibited.

5. The plaintiff, therefore, filed application dated 3rd October, 2017 at Exhibit 38 for marking documents at Sr. No. 5 and 6 as Exhibits. By the impugned order, the learned trial Judge rejected the application. Mr. Thorat submitted that the documents at Sr. No.5 and 6 are public documents as contemplated by section 74 of the Indian Evidence Act, 1872 (for short 'Act'). Section 77 of the Act does not require proving contents of public documents and mere production of certified copies without examining any witness is permissible. A certified copy of the public document is admissible in evidence without being proved by calling the witness. He relied on the decision of the Apex Court in the case of **Jaswant Singh Vs. Gurudev Singh and others, (2012) Supreme Court Cases, 425** and in particular paragraph 13 thereof.

6. Mr. Thorat has also invited my attention to the cross-examination of the plaintiff to contend that in the cross-examination, the defendants have confronted witness with documents at Sr. No.5

viz; inspection extract dated 27th December, 2000. He, therefore, submitted that in any case, the learned trial Judge should have marked the document at Sr. No.5 as Exhibit. As document at Sr. No.6 is public document, the learned trial Judge should have marked that document as Exhibit. He, therefore, submitted that documents at Sr. No. 5 and 6 deserve to be marked as Exhibits, thereby allowing application Exhibit 38.

7. On the other hand, Mr. Shah submitted that defendants No.1 and 2 did not confront witness of the plaintiff with document at Sr. No.5 inasmuch as it was not even marked as Exhibit. By order dated 13th February, 2017, the learned trial Judge declined to mark it exhibit without examining the author of the document. He further submitted that documents at Sr. No.5 and 6 cannot be considered as public documents in the absence of certificate issued u/s 76 of the Act. He further submitted that by order dated 16th February, 2018, the Appellate Court permitted the plaintiff to call the concerned witness who had issued inspection extracts to prove those documents. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered rival submissions of the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the plaintiff has filed Affidavit of examination-in-chief in November, 2014. On 4th December, 2014, he has produced list of documents at Exhibit 29. On 13th February, 2017, in so far as documents at Sr. No. 5 and 6 are concerned, the learned trial Judge passed the following order;

Order

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- (5) The inspection reports/extracts at Sr. No.5 & 6 cannot be marked exhibits without examining the author.

9. Mr. Thorat submitted that the documents at Sr. No.5 and 6 are public documents. In order to appreciate this submission, it is necessary to refer to Section 74, 76 and 77 of the Act.

74. Public documents.- The following documents are public documents:-

- (1) Documents forming the acts, or records of the acts-
 - (I) of the sovereign authority
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, (of any part of India or of the Commonwealth] or of a foreign country;
- (2) Public records kept [in any State] of private documents.

76. Certified copies of public documents.- Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, **together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and such copies so certified shall be called certified copies.**

Explanation.- Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall

be deemed to have the custody of such documents within the meaning of this section.

Emphasis supplied

77. Proof of documents by produced of certified copies.- Such certified copies may be produced in proof of the contents of the public documents or part of the public document of which they purport to be copies”.

10. A perusal of Section 76 shows that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

11. In the case of **Jaswant Singh** (supra), the Apex Court has observed in paragraph 13 thus;

“Hence, it is a public document in terms of Section 74 of the Evidence Act, 1872 (in short the “Act”) and certified copy of the public document prepared under Section 76 of the Act is admissible in evidence under Section 77 of the said Act. A certified copy of a public document is admissible in evidence under Section 77 of the said Act. A certified copy of a public document is admissible in evidence without being proved by calling the witness”.

12. In the present case, a perusal of document at Sr. No.5 and

6 does not indicate compliance of section 76 of the Act viz: there is no certification by the Officer who has issued those documents. In so far as document at Sr. No.6 is concerned, Mr. Thorat is not in a position to show that it was referred to in the cross-examination of the plaintiff. Even perusal of cross-examination of that witness does not show that document at Sr. No.6 is referred in his cross-examination.

13. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application at Exhibit 38. In any case, the Appellate Court has permitted the plaintiff to call the concerned witness who has issued inspection extract for proving the said document. Hence, Petition fails and as such, the same is dismissed.

14. It is 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 memorandum of Appeal as contemplated by Section 105(1) of the Code of Civil Procedure, 1908.

[R.G. KETKAR, J.]