

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4201 OF 2014

Joseph Simon Fernandes	 Petitioner
V/s.	
Mahesh Madhukar Kulkarni	 Respondent

Mr. Datta H. Pawar for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH JANUARY 2018.

P.C. :

1. Heard Mr. Pawar, learned counsel for the Petitioner.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 12th February 2014 passed by the Court of 2nd Joint Civil Judge, Junior Division, Kolhapur, below “Exhibit-33” and below “Exhibit-35” in Regular Civil Suit No.608 of 2012.

3. The application at “Exhibit-33” was filed by the Petitioner for production of documents by way of secondary evidence, which were the photocopies of the disputed cheque, the memo and the notices. The said

application was, naturally, rejected by the Trial Court. Thereafter, the Petitioner has filed the application at “Exhibit-35”, producing therewith the certified copies of those documents. The Trial Court rejected the said application also, on the count that, the application was filed at the belated stage; especially after the evidence of the Petitioner was recorded and he was also cross-examined. Not only that, one witness was also examined on behalf of the Petitioner and Petitioner has closed his evidence. Petitioner has also deposed regarding those documents at length and hence, it was held that, such permission for leading secondary evidence in the form of certified copies of the disputed cheque, memo, notices etc. cannot be allowed.

4. The submission of learned counsel for the Petitioner is that, the original documents were produced by the Petitioner in Summary Criminal Case No.306 of 2010 filed against the Respondent under Section 138 of the Negotiable Instruments Act, 1881. That case was decided on 8th September 2011. However, the Criminal Appeal No.224 of 2011 preferred against the said decision is pending in the Appellate District Court. Therefore, as the entire record and proceedings of the Summary Criminal Case No.306 of 2010 is kept in the Appeal, he was unable to produce the original documents. It is submitted that, as on today also, the said Appeal is pending and, therefore, the Petitioner may be permitted to rely upon the certified copies of those documents.

5. However, as rightly held by the Trial Court, the Petitioner has filed the application at a very belated stage, after his evidence was closed and, therefore, when, since beginning, he was aware that original documents are very much available, as they were filed in the Summary Criminal Case No.306 of 2010, he could have produced the certified copies thereof at the earlier stage and the best mode was to get those original documents from the said case, with the permission of the Court, and to produce them in this Suit for the purpose of proving those documents. The Petitioner has not adopted this course and hence, the Trial Court has rightly rejected the said application.

6. Writ Petition, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]