

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.372 OF 2018

Aristo Pharmaceuticals Limited	]	Petitioner
Vs.		
Binani Industries Limited	]	Respondent

.....
Mr. Anand H. Gandhi, for Applicant.
Mr. Jaydeep Deo, for Respondent.

.....
CORAM : R.G. KETKAR, J.
DATE : 14TH AUGUST, 2018.

P.C.

Heard Mr. Gandhi, learned Counsel for the applicant and Mr. Deo, learned Counsel for the respondent at length.

2. Mr. Gandhi seeks leave to covert Civil Revision Application into Writ Petition. Leave as prayed for is granted. Amendment shall be carried out within one week from today.

3. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C') the applicant, hereinafter referred to as "defendant" has challenged the order dated 28th March, 2018 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Mumbai in L.E. & C Suit No.261/283 of 2003 in so far as marking document at Sr. No.6 viz: photo copies of agreements dated 24th February, 1977 and 28th February, 1977 as exhibitis.

4. In support of this application, Mr. Gandhi submitted that the learned trial Judge proceeded on the premise that the plaintiff had given notice and has complied section 66 of the Indian Evidence Act, 1872 (for short 'Act'),

He submitted that the plaintiff did not issue notice as contemplated by Section 66 of the Act. Despite that, the learned trial Judge proceeded on the footing that the plaintiff had given notice and thus complied requirements for leading secondary evidence. He invited my attention to paragraph 9 of the affidavit of evidence of Mr. Rajkumar Bhimrao Yevlekar.

5. On the other hand, Mr. Deo has invited my attention to paragraph 6, 17 and 25 of the written statement where defendant has admitted existence of agreements dated 24th February, 1977 and 28th February, 1977. He relied on section 65(b) of the Act to contend that when existence of the documents is admitted by the defendants, subject to proof of contents thereof, the learned trial Judge was justified in marking documents as exhibits.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the defendant has admitted existence of agreements dated 24th February, 1977 and 28th February, 1977, as is evident from paragraphs 6,17 and 25 of the written statement. The plaintiff has to prove existence of these agreements. In view thereof, I do not find that the learned trial Judge has committed any error in marking these documents as exhibits. It is, however, clarified that marking of these documents is subject to the proof of contents thereof. The 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 memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]