

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6453 OF 2018

Shri. Chintamani Ramkishore Yadav	...Petitioner
<i>Versus</i>	
Mr. Safarali R. Mardhani	
And Ors	...Respondents

....
Mr. Chetan Yadav I/b. R. V & Co. for the Petitioner.
Mr. Y.K. Tiwari I/b. K.P. Tiwari & Co. for Respondent No.1.
....

CORAM : R. G. KETKAR, J.

DATE : 09th JULY, 2018

P.C.

1. Heard Mr. Chetan Yadav, learned counsel for the petitioner and Mr.Y.K. Tiwari, learned counsel for respondent No.1, at length. Mr.Yadav submits that respondent No.1 is the only contesting respondent.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the order dated 14.12.2017 on admissibility of documents filed vide list Exhibit-124 as also the order dated 15.12.2017 below Exhibit-139 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.329/712 of 2004.

3. Rule. Mr. Tiwari waives service on behalf of respondent No.1. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By order dated 14.12.2017, the learned trial Judge has marked certain documents produced by the defendant as exhibits and certain documents were not exhibited on the ground that they are photocopies. It is settled principle of law that mere marking of the documents by itself does not amount to proving the contents thereof. The defendants will be at liberty to prove the contents of these documents and the plaintiff will be at liberty to cross-examine the defendant's witness. Hence, no case is made out for interfering with the impugned order dated 14.12.2017. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the order dated 14.12.2017, 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.

5. In so far as the order dated 15.12.2017 is concerned, by that order the learned trial Judge has closed the cross-examination of DW-4 by the plaintiff. Mr. Yadav assures that if the order is set aside, he will

cross-examine DW-4 on the date fixed by the learned trial Judge. Mr.Tiwari, on instructions, states that the next date before the trial Court is 11.7.2018. In view thereof, the order dated 15.12.2017 is set aside. The learned trial Judge will fix suitable date for cross-examination of DW-4. Mr. Yadav assures that the plaintiff will cross-examine DW-4 and will not seek undue adjournment.

6. In the light of the aforesaid discussion, Rule is partly made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)