

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6690 OF 2018

Bank of Baroda ... Petitioner
Vs.
Taralaxmi Kantilal Shah ... Respondent

Mr. V. Y. Sanglikar for Petitioner.
Mr. R. D. Soni for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 6, 2018

P.C. :

Heard Mr. Sanglikar, learned Counsel for the petitioner and Mr. Soni, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the order dated 27.04.2018 passed by the learned Judge, Court Room No.19 of the Small Causes Court at Mumbai below exhibit-79 in T.E.Suit No.171/209 of 2012. By that order, the learned trial Judge allowed the application exhibit-79 filed by the respondent, hereinafter referred to as 'plaintiff', raising objection as regards leading of evidence by D.W.2 - Suresh Chandra Agrawal. The learned trial Judge rejected the evidence of D.W.2. Rule. Mr. Soni waives service for the respondent. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. Defendant had earlier instituted Writ Petition No.2116 of 2016 in this Court. By order dated 05.10.2016, Petition was disposed of by permitting parties to lead evidence for the purpose of finding out as to whether the defendant was at fault for not handing over possession or

whether the plaintiff was at fault for not taking over possession. The parties were permitted to adduce evidence only on this limited aspect before the trial Court and the trial Court was requested to dispose of the application exhibit-20 filed by the plaintiff, as expeditiously as possible and preferably within six months from production of the authenticated copy of that order.

4. In pursuance thereof, plaintiff had adduced the evidence. Defendant examined D.W.1 Lomesh Jobanputra, Chief Manager of Khetwadi Branch Office of Bank of Baroda. D.W.1 filed affidavit in examination-in-chief under Order XVIII, Rule 4 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') on 31.08.2015. D.W.1 produced documents marked as exhibits-49 to 57 except document (passbook) at exhibit-52. D.W.1 was cross-examined and his cross-examination was over on 16.02.2018. Defendant filed affidavit in examination-in chief of D.W.2 – Suresh Chandra Agrawal on 31.08.2015 on the ground that during the course of cross-examination of D.W.1, it was sought to be brought on record that he has no personal knowledge about the evidence sought to be filed by him as also he has no personal knowledge about the statements made by him in paragraphs No.4(i) to (xvii). Plaintiff, therefore, filed application exhibit-79 for discarding the evidence of D.W.2 on the ground that the evidence sought to be adduced by D.W.2 in his affidavit is already adduced by D.W.1. In other words, the averments made by D.W.2 in his evidence affidavit are same and identical to that of averments made by D.W.1, and therefore, evidence of D.W.2 is not necessary. By the impugned order, the learned trial Judge has allowed the application and discarded evidence of D.W.2.

5. The matter was heard at length from time to time and was heard today. During the course of hearing, parties arrived at consensus to the following effect:

- a. the contents of documents at exhibits-49 to 57 are proved and the same shall be read in evidence;
- b. the parties are at liberty to advance arguments as regards effect of these documents and the learned trial Judge will consider these arguments in the light of the evidence adduced by the parties;
- c. the documents at exhibits-49 to 57 shall not be discarded on the ground that D.W.1 has no personal knowledge.

6. In view thereof, defendant does not intend to examine D.W.2. The impugned order accordingly stands modified. Rule is made absolute with no order as to costs. As the evidence of parties is over, the learned trial Judge is requested to dispose of the proceedings as early as possible and in any case within 4 weeks from the production of the authenticated copy of this order.

7. Parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

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