

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (St.) NO. 18560 OF 2018

Mrs.Meena Akhtar Rizvi

...Petitioner

Versus

Mr. Celestino Peter Vaz
and another

...Respondents

....

Mr. Drupad Patil, Advocate a/w. Amit Dubey i/b. Ravi Thankaian, for the
Petitioner.

Mr. Pradip Kadam, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 10th AUGUST, 2018

P.C.

1. Heard Mr.Drupad Patil, learned counsel for the petitioner and Mr. Pradip Kadam, learned counsel for the respondents, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged (i) the order dated 18.8.2016 below Exhibit-56, (ii) order dated 18.8.2016 below Exhibit-60 and (iii) order dated 2.4.2018 below Exhibit-71 passed by the learned Judge, Court Room No.36 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.8/2006.
3. By order dated 18.8.2016 below Exhibit-56, the learned trial Judge rejected the application made by the plaintiff *inter alia* praying for recall of PW-1 and for filing additional affidavit of evidence to produce

photo-copy of the certified true copy of the proceedings Long Cause Suit No.1913/1983 and the letter dated 1.4.2015 issued by Reserve Bank of India under Right to Information Act, 2005 (for short, 'R.T.I. Act').

4. By order dated 18.8.2016 below Exhibit-60, the learned trial Judge rejected the application filed by the plaintiff seeking permission to file original of the certified true copy of the papers and proceedings in L.C. Suit No.1913/1983 in his evidence by filing affidavit of evidence.

5. By order dated 2.4.2018 below Exhibit-71, the learned Judge sustained the objections raised by the defendants when the plaintiff tried to confront DW-1 with the certified copies of the Court proceedings and information obtained under R.T.I. Act. The learned trial Judge declined the permission to the plaintiff to confront DW-1 with the documents filed alongwith list Exhibit-69 during her cross-examination.

6. Mr. Patil submitted that application Exhibit-56 was filed for recalling PW-1 and for filing additional affidavit of evidence to produce photo-copy of the certified true copy of the proceedings Long Cause Suit No.1913/1983 and the letter dated 1.4.2015 issued by Reserve Bank of India under R.T.I. Act. The application was filed on the ground that the original of the certified true copies of the papers and proceedings of L.C. Suit No.1913/1983 are not traceable. During pendency of this application, the plaintiff filed application Exhibit-60 on 1.4.2016 seeking permission to

produce original of the certified true copies of the said suit. The plaintiff ought not to have pressed application Exhibit-56 and should have pressed only Exhibit-60. Instead of that the plaintiff invited order below Exhibit-56 which was rejected by the learned trial Judge on 18.8.2016. He submitted that in paragraph-7 of the order below Exhibit-60, the learned trial Judge observed that on perusal of the papers and proceedings of L.C. Suit No.1913 of 1983, it is merely a photocopy of the certified copy and accordingly rejected the application. He submitted that as the prayer was made in application Exhibit-60 for production of original of the certified copies, the learned trial Judge was not justified in rejecting the application on the ground that photo-copy of the certified copy of L.C.Suit No.1913/1983 was produced. He states that within one week from today, the plaintiff will file review of order dated 18.8.2016 below Exhibit-60 and if such application is filed the learned trial Judge may be directed to dispose of said application on its own merits and not on the ground that it is barred by limitation and challenge to the order dated below Exhibit-71 may be kept open subject to the outcome of the Review Petition.

7. In view thereof, the Petition is disposed of in following terms :

- i. Application Exhibit-56 is not pressed and consequently the order below Exhibit-56 also, therefore, does not survive for consideration.
- ii. Liberty is reserved to the plaintiff to file application for review of the

order dated 18.8.2016 below Exhibit-60. If such an application is filed within one week from today, the learned trial Judge shall decide the same on its own merits and in accordance with law. The learned trial Judge shall not reject the same on the ground that it is barred by limitation. All contentions of the parties in that regard are expressly kept open.

- iii. Liberty is reserved to the plaintiff to challenge the order dated 2.4.2018 below Exhibit-71 depending upon the outcome of Review Petition.
- iv. Grant of liberty shall not be construed as an expression of opinion on merits of the case either way. The learned trial Judge will decide the application for review of the order dated 18.8.2016 below Exhibit-60 uninfluenced by the observations made in the said order as also in the present order.
- v. Writ Petition is disposed of in aforesaid terms. Order accordingly.

Pradipkumar
Prakashrao
Deshmane
Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date:
2018.08.14
18:14:11 +0500

(R. G. KETKAR, J.)

Deshmane (PS)