

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9728 OF 2018

Jaya Hindurao Patil & Ors.

.. Petitioners

Vs.

Rajendra Hindurao Patil & Ors.

.. Respondents

Mr.Kedar Lad for the petitioners.

Ms.Anupama Pawar for the respondent nos.1 to 5.

CORAM : R.D. DHANUKA, J.

DATE : 23rd October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 23rd July 2018 passed by the learned Civil Judge, Junior Division, Panhala below Exhibit-205 and another order dated 23rd July 2018 below Exhibit-206.

2. In so far as the Exhibit-205 is concerned, the petitioners had filed the said application on 16th April 2018 inter alia praying for requesting the learned trial Judge to watch the said CD (Compact Disc). In so far as the Exhibit-206 is concerned, the said application was filed on 11th June 2018 inter alia praying for permission to the petitioners (original plaintiffs) to produce original documents which were mentioned in the examination-in-chief of the petitioner no.1.

3. Learned counsel for the petitioners submits that no prejudice would be caused to the respondents if the petitioners are allowed to produce those documents at this stage. He submits that there was no

dispute about existence of those documents. There was cross-examination of the petitioners' witness done by the respondents. In support of this submission, learned counsel for the petitioners placed reliance on the judgment of this Court in the case of ***M/s.Black Ticket Films Vs. Mr.Walter Philip & Anr., 2018 (5) All M. R. 195.***

4. Learned counsel appearing for the respondent nos.1 to 5, on the other hand, submits that the evidence of both the parties is already closed. The said CD was not marked as exhibit by the learned trial Judge in view of the petitioners not having proved the contents and existence of those documents though examined the witnesses and thus the learned trial Judge has rightly rejected the said application.

5. In so far as the production of document is concerned, it is submitted by the learned counsel for the respondent nos.1 to 5 that the petitioners had given ample opportunity to produce original documents prior to filing of affidavit of evidence or even at the time of filing of affidavit of evidence. The respondents had disputed the existence of the documents and in view of the petitioners not having proved those documents, the said documents were not marked as exhibits by the learned trial Judge. She submits that the learned trial Judge has thus rightly rejected the said application also in view of the fact that both the parties have closed their evidence and the matter was placed for arguments.

6. Learned counsel for the respondent nos.1 to 5 invited my attention to the roznama of the trial Court proceedings and would submit that from 16th April 2018, the matter has been adjourned several times

on account of the petitioners. Her clients is not able to commence the arguments in view of adjournment sought by the learned counsel for the petitioners from time to time.

7. In so far as the Exhibit-205 is concerned, it is not in dispute that the said CD has not been marked as exhibit in view of the objection raised by the respondents and on the ground that the same was not proved by the petitioners though examined the witnesses. In my view, the petitioners thus could not have applied before the learned trial Judge to watch the said CD which was disputed and not proved by the petitioners. The learned trial Judge has rightly rejected the application below Exhibit-205.

8. In so far as the Exhibit-206 is concerned, it is not in dispute that the said original documents are not relied upon by the petitioners prior to filing of affidavit of evidence or even at the time of filing of affidavit of evidence. Witnesses is examined by the petitioners and were cross-examined by the respondents. The respondents also entered the witness box. The evidence of the respondents is already closed. The matter has been placed for arguments. In these circumstances, the learned trial Judge was justified in rejecting the application below Exhibit-206 also.

9. In so far as the judgment of this Court in the case of ***M/s.Black Ticket Films Vs.Mr.Walter Philip & Anr.(supra)*** is concerned, this Court has taken a view that failure to question witness on any aspect of his deposition amounts to admission of those facts. In this case, the petitioners had applied for production of the alleged original documents

which were never relied upon by the petitioners nor annexed to the plaint as well as the affidavit of evidence. The judgment of this Court in the case of *M/s.Black Ticket Films Vs.Mr.Walter Philip & Anr.(supra)* thus would not assist the case of the petitioners. Reliance placed by the learned counsel for the petitioners is thus totally misplaced.

10. I do not find any infirmity in the impugned orders passed by the learned trial Judge. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.