

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.13654 OF 2017

Arnold Von Geyer and Anr.] Petitioners

Vs.

Mrs. Mumtaz Iqbal Shaikh] Respondent

.....

Mr. Denzil D'Mello, for Petitioners.

Mr. Rajesh Patil, for Respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 13TH MARCH, 2018.

P.C.

Heard Mr. D'Mello, learned Counsel for the petitioners and Mr. Patil, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 10th July, 2017 passed by the learned Judge, Court Room No,12 of the Court of Small Causes at Mumbai in R.A.E. Suit No.908/1668 of 1998 while dealing with admissibility of documents filed by the respondent/plaintiff along with list at Exhibit 63.

3. In October, 2013, the plaintiff had filed affidavit of evidence of P.W.1 enclosing list of documents at Sr. No.1 to 29 colly. In the impugned order, the learned trial Judge recorded that the learned Counsel for defendants No.1 and 2 admitted documents at Sr. No.1 to 9, 11, 14, 18 to 23, 25 and 26 and denied rest of the documents.

4. In the present Petition, Mr. D'Mello restricted his challenge to marking of the documents as exhibits Exhibit 83 colly, 85 colly, 88 colly, 92 colly and 101 colly.

5. In so far as Exhibit 83 colly is concerned, the learned trial Judge observed that documents at Sr. No.18 is copy of the letter dated 11th February, 1988 with reference No.001546. The receipt of the said letter is admitted by the petitioners/defendants. They also admitted reply dated 8th May, 1998 sent in view of the letter dated 11th February, 1998. The learned trial Judge, therefore, marked copy of the letter and its reply at Exhibit 83 colly. A perusal of the list shows that document at Sr. No.18 is office copy of the letter dated 11th February, 1988 with reference No. 001546, In view thereof, I do not find that the learned trial Judge committed any error in marking the document subject to clarification that the same is marked subject to proof of the contents thereof.

6. In so far as documents at Exhibit 85 colly are concerned, the plaintiff has produced document at Sr. No.20 which is letter dated 13th May, 1998 with reference No. 004520 along with reply dated 10th June, 1998 sent in respect of that letter. The documents are admitted by the defendants and, therefore, the learned trial Judge marked those documents as Exhibit 85 colly subject to proof of contents of the letter dated 13th May, 1998.

7. In so far as document at Sr. No.23 is concerned, learned Advocate for the defendants has addressed a letter dated 22nd November, 1999. Learned Advocate for the plaintiff has issued letter dated 16th March, 2000. Learned Advocate for the defendants has

issued letters dated 24th March, 2000 and 27th May, 2000. The learned trial Judge has marked these documents as Exhibit 88 colly on the ground that the defendants have admitted receipt of letter dated 16th March, 1999 besides issuance of other letters. In my opinion, as far as letters issued by defendants are concerned, namely letter dated 22nd November, 1999, 24th March, 2000, and 27th May, 2000, I do not find that the learned trial Judge committed any error. In so far as letter dated 16th March, 2000 issued by the learned Advocate for the plaintiffs is concerned, which forms part of Exhibit 88 colly. I also do not find any error in marking that document as part of Exhibit 88 colly subject to the clarification that the plaintiff will have to prove contents of letter dated 16th March, 2000.

8. In so far as document at Sr. No.5 is concerned, it is affidavit dated 28th February, 1997 allegedly sworn by Mrs. Alice Gertrude Von Feyer. It is denied by the defendants. The learned trial Judge has marked this affidavit as Exhibit 92 subject to proof of contents of the said affidavit on the ground that it is coming from the proper custody and the said fact is referred in the affidavit of examination-in-chief. In view thereof, I do not find that the learned trial Judge has committed any error in marking the document at Exhibit 92.

9. In so far as document at Sr. No.28 is concerned, it is certified copy of the letter dated 10th August, 2001 issued by the Rent Collector to the Court Receiver, High Court, Bombay along with certified true copy of the order passed by the Court Receiver on 16th August, 2001 in High Court suit No.1948 of 1999. The learned trial Judge observed that both the documents are true copies issued with

the seal and signature of Section Officer, Office of Court Receiver High Court Bombay. The learned trial Judge observed that these documents are copies of the order in judicial proceedings and accordingly marked Exhibit 101 colly. Apart from that in view of section 74 of the Indian Evidence Act, 1872 these documents are public documents and in view of section 76 and 77 thereof, such copies can be produced in proof of contents of the public documents. In view thereof, I do not find that the learned trial Judge committed any error in marking these documents at Exhibit 101.

10. In light of aforesaid discussions, I do not find that the learned trial Judge has committed any error in marking those documents as exhibits. Hence, Petition fails and the same is dismissed.

11. 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.]