

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

WRIT PETITION NO. 13941 OF 2017

Dhananjay Balkrishna Mahabaleshwarkar (Since deceased) Through LRs. & Ors. V/s. Vijay Balkrishna Mahabaleshwarkar (Since deceased) Through LRs. & Ors.	...	Petitioners Respondents
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- Mr.Venkatesh A. Shastry for the Petitioners.
- Mr.S.N. Chandrachood for the Respondent Nos.1A & 1B.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2018.

P.C. :

- 1] Heard learned counsels for both the parties.
- 2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 5th October 2017 passed below Exhibit-83 in Special Civil Suit No.1245 of 2015 by the Civil Judge Senior Division, Pune.
- 3] The Application at Exhibit-82 was filed by the Respondent Nos.1A and 1B/Original Plaintiff for permission to lead secondary evidence in respect of the documents produced at Serial Nos.6 to 8

and 14 to 21 along with the “List of Documents” filed with Affidavit of examination-in-chief.

4] The Application was resisted by the present Petitioners raising various contentions and the trial Court has passed following order:

“Heard both sides. Perused pleadings of the parties and ratios relied upon. Considering theory of partnership the permission sought to adduce secondary evidence is granted to the Plaintiffs as prayed. Considering the fact that documents were taken away after forceful dispossession of Plaintiffs from the suit property.”

5] Thus perusal of the order does not require any comment to state that the order is without giving any reasons, even without citing the ratios of the Case Laws were relied upon by the parties. The order even does not contain the description of the documents or whether they are xerox copies or otherwise. It also does not state under which clause of Section 65 of Evidence Act, the permission was granted to the Respondents to lead secondary evidence. It is also not recording the satisfaction of the trial Court that these conditions laid down in Section 65 of the Evidence Act were fulfilled in order to permit Respondent/Plaintiff to lead such secondary evidence.

6] In view thereof, the impugned order cannot be sustainable in law; hence it needs to be quashed and set-aside.

7] Accordingly, Writ Petition is allowed, the impugned order passed by the trial Court is quashed and set-aside.

8] The matter is remanded back to the trial Court for deciding the application at Exhibit-83 with speaking order and giving the reasons. Both the parties are directed to appear before the trial Court on 3rd February 2018, which is the date given by the trial Court. Thereafter, the trial Court, should decide the said application within one month.

9] All concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]