

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

WRIT PETITION NO. 2194 OF 2013

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Shankarrao Anandrao Sawant ... Respondent

**WITH
WRIT PETITION NO. 846 OF 2013**

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Sachin Shankarrao Sawant ... Respondent

**WITH
WRIT PETITION NO. 1244 OF 2013**

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Sachin Shankarrao Sawant ... Respondent

**WITH
WRIT PETITION NO. 1527 OF 2013**

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Kailash Shankarrao Sawant ... Respondent

**WITH
WRIT PETITION NO. 1851 OF 2013**

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Kailash Shankarrao Sawant ... Respondent

**WITH
WRIT PETITION NO. 1864 OF 2013**

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Shankarrao Anandrao Sawant ... Respondent

**WITH
WRIT PETITION NO. 11394 OF 2012**

Suyojit Buildtech Private Limited and others ... Petitioners
Versus
Kailash Shankarrao Sawant ... Respondent

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Mr. M. S. Bhandari i/b Pranjali Bhandari for Petitioners in all Writ Petitions.

Mr. S.M. Gorwadkar, Senior Advocate a/w Ravi Shinde for Respondent in all Writ Petitions.

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CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 4th JULY, 2018.

P. C.:

1. Rule. By consent, Rule is made returnable forthwith and heard finally.

2. These Petitions are disposed of by this common order, as the order dated 25/09/2012 passed by the learned Civil Judge, Senior Division, Nashik is challenged in all these Writ Petitions.

3. The Plaintiff has filed the suit for declaration and cancellation of Memorandum of Understanding (MOU) which was executed between the Plaintiff and Defendant No.1 i.e. the present Petitioner No.1. The Plaintiff has produced the photocopy of the MOU alongwith the plaint. However, the application was moved by Plaintiff calling upon the Defendants to produce the original MOU. Pursuant to the said application, the original MOU was produced by the Petitioners-Defendants. After inspection of the original MOU, the Plaintiff has moved an application to the Court to allow to lead secondary evidence i.e. Photocopy of the MOU in the evidence. According to them, one sentence was inserted in the original MOU and thus, the Plaintiff has found that one sentence was added in the MOU and one page of the original MOU was photocopy and was not original. Therefore, Plaintiff has moved an application and sought permission from the Court to lead secondary evidence. The application was opposed by the Petitioners-Defendants. The learned Judge allowed the application, by mentioning specifically in paragraph No.13 of the order that, considering the issue of tampering of document, which is a crucial point, the parties are to be allowed to lead necessary

evidence. Therefore, the trial Court permitted the Plaintiff to lead secondary evidence on the document i.e. MOU filed below Exhibit-3/3.

4. Heard the submissions of learned Counsel of both the sides. No interference is required in the order passed by the learned Judge of the Trial Court as the order is well reasoned. However, it is made clear that the Plaintiff is allowed to lead secondary evidence subject to proof of the said documents which is a photocopy of the MOU. The Plaintiff shall produce proof at the time of examination-in-chief. It is upto the trial Court that when fraud is pleaded in respect of two documents, then, both the documents should be before the Court for perusal.

5. Rule in each of the Petition is discharged. Writ Petitions are dismissed accordingly.

(MRIDULA BHATKAR, J.)