

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

WRIT PETITION NO. 13514 OF 2017

Miss.Anisha Shankar Vhatkar & Ors.	...	Petitioners
V/s.		
Smt.Assar Begum Appalal Mujawar	...	Respondent

- Mr.Shivaji A. Masal for the Petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioners.
- 2] Learned counsel for the Respondent is absent yesterday and today also.
- 3] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are invoking the writ jurisdiction of this Court to challenge and set-aside the order dated 27th October 2017 passed by the 7th Jt. Civil Judge Senior Division, Thane, below Exhibit-43 in Regular Civil Suit No.1574 of 2012.
- 4] The Application at Exhibit-43 was filed by the present

Petitioners for exhibiting the document, namely, the agreement for sale dated 23rd April 1996. The said application was, however, rejected by the trial Court, vide its impugned order, holding that the examination-in-chief of the Petitioner-Plaintiff is complete and the cross-examination is also partly completed. The Petitioners have not mentioned the provisions under which such application can be allowed and no satisfactory reason is mentioned for exhibiting the said document.

5] While challenging this order of the trial Court, the submission of learned counsel for the Petitioners is that this agreement for sale was very much produced along with Affidavit of examination-in-chief and it was specifically mentioned also in paragraph No.3 of the Affidavit of examination-in-chief. Along with Affidavit in examination-in-chief, some other documents were also produced and the trial Court has exhibited the other documents. However, the trial Court has not exhibited this agreement for sale and it was done without assigning any reason. Therefore, the Petitioners were constrained to move this application before the trial Court for exhibiting this agreement of sale. The trial Court should have done the same, even under its inherent powers instead of insisting of any provision of law. According to learned counsel for the Petitioner, the

impugned order passed by the trial Court, therefore, needs to be quashed and set-aside.

6] The perusal of the Affidavit of examination-in-chief filed on behalf of the Petitioners by Petitioner No.1-Ms.Anisha Shankar Vhatkar before the trial Court goes to show that the Petitioners have produced this agreement for sale, dated 23rd April 1996 therewith and it was marked as Exhibit-B. Learned counsel for the Petitioners makes a statement at bar that though in the Affidavit of examination-in-chief, it is mentioned as copy, in fact the original agreement was produced before the trial Court at Exhibit-B. It was also stated in the Affidavit that the contents of the agreement are true and correct to the best of his knowledge.

7] It is pertinent to note that, the trial Court has after recording the verification, exhibited some other documents which were produced along with Affidavit of examination-in-chief, but has not referred to this agreement for sale, either for exhibiting it or for not exhibiting it. In such situation, the trial Court should not have rejected the Petitioners application filed at Exhibit-43 for exhibiting the said document and that too on the ground that under which provision of law such application is maintainable. If the trial Court

itself has failed to exhibit it or not exhibit it, though it was produced alongwith evidence Affidavit, it was duty of the trial Court to entertain and decide the application filed by the Petitioner, in its inherent powers under Section 151 of C.P.C..

8] Hence, Writ Petition is allowed. The impugned order passed by the trial Court is quashed and set-aside and the trial Court is directed to decide the said application afresh, considering that the agreement for sale was filed alongwith the Affidavit itself and thereafter, to proceed with the cross-examination of the Petitioner.

9] Writ Petition is disposed of in above terms.

10] The concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]