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

WRIT PETITION NO. 1020 OF 2017

Mr Sushant V. Parmar

...Petitioner.

vs

Bonny Charlie Baptista & Anr.

...Respondents

.....

Mr Satyan N. Vaishnav a/w Ms Nupur J. Mukherjee & Rahul Raut I/b
M/s N.N.Vaishnawa & Co. for the Petitioner.

Mr Induprakash Tripathi a/w Bhagyashri Gawas for Respondent No.1.

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**CORAM : B.P.COLABAWALLA, J.
NOVEMBER 22, 2018.**

P.C. :

By this Writ Petition filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 12th November, 2016 passed below Exh.8. Exh. 8 was an application filed by the original plaintiff (respondent No.1 herein) for leading secondary evidence. This application came to be allowed by the Trial Court and this is how the present Writ Petition has been filed.

2 Mr Vaishnav, learned advocate appearing on behalf of the petitioner, was at pains to point out that the impugned order suffers from grave infirmity inasmuch as no secondary evidence could have been lead in relation to documents, which according to the petitioner, were forged and fabricated. He further submitted that before allowing a party to lead secondary evidence, the court has to satisfy itself that the conditions as stipulated in Section 65 of the Indian Evidence Act,

1872, have been complied with. He submitted that in the facts of the present case this was completely missing. In these circumstances, he submitted that the impugned order suffers from grave infirmity and ought to be set aside by me in my equitable and extraordinary jurisdiction under Article 227 of the Constitution of India.

3 I am unable to agree with the submissions made by Mr Vaishnav. It is not in dispute that the trial is still ongoing before the Trial Court. Section 105 of the Code of Civil Procedure, 1908 clearly stipulates that, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the Memorandum of Appeal. In the facts of the present case, as mentioned earlier, the trial has not concluded. In the event that if a decree is suffered by the Petitioner, in terms of Section 105 of the Code of Civil Procedure, 1908 it would always be open for the petitioner to challenge this very order at the time of laying a challenge to the ultimate decree that may be passed in the suit.

4 In these circumstances, I do not think that this is a fit case to entertain this Writ Petition. It is, accordingly, dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

(B.P.COLABAWALLA, J.)