

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4734 OF 2019

SMT. MEENA MOHANDAS DUKLE)...PETITIONER

V/s.

MOHAMMAD AKBAR SHAIKH AND ORS.)...RESPONDENTS

Shri.Dhananjay C. Pathak, Advocate for the Petitioner.

Shri.Ian J. Pegado, Advocate for Respondent Nos.1 and 2.

Shri.A.B.Kadam, AGP for the Respondent No.3.

CORAM : A. M. BADAR, J.

DATE : 8th NOVEMBER 2019

P.C. :

1 This is a petition by plaintiff in a suit for possession of a shop. By this petition, the petitioner is challenging the order passed by the learned Civil Judge, Senior Division, Vasai, on 18th June 2018, on an application moved by defendant no.1 for production of documents. The impugned order reads thus :

“ **ORDER BELOW EXH.97**

Perused the application and say. Heard both the sides. Hence, in the interest of justice, permission is granted to file the documents on record.”

2 Heard finally.

3 The learned counsel appearing for the petitioner/ original plaintiff argued that an application for production of documents came to be moved on 15th January 2018 by the defendant no.1. By that time, 90% of the trial was already over. Evidence of the plaintiff was already closed. Evidence of three witnesses of defendants was also over and at the fag end of the trial, an application for production of documents came to be moved by the defendant no.1. It is further argued that documents were not filed at the time of adducing evidence by the plaintiff or even at the time of cross-examination of the plaintiff or his witnesses. The documents are false and fabricated and those were also not produced even during evidence of defendants.

Therefore, the learned trial court ought not to have taken those documents on record.

4 The learned counsel for the respondent/defendant no.1 opposed the petition by contending that what was sought to be produced are originals of documents which are already produced by the plaintiff along with the plaint by list of documents Exhibit 3. Therefore, the impugned order is perfectly legal.

5 Heard both sides. Averments in the application at Exhibit 97 are to the effect that the plaintiff has already placed on record photocopies of Deed of Agreement dated 5th September 2004 and Deed of Power of Attorney dated 23rd August 2004 and defendants have admitted those photocopies and had given “No Objection” for exhibiting those documents. It is further averred in the application Exhibit 97 by the defendant no.1 that he wants to produce originals of those documents to avoid technical hurdle in disposal of the suit.

6 I have perused the list of documents Exhibit 3 filed by the petitioner/plaintiff along with the plaint. At Serial No.4 of that list of documents, General Power of Attorney dated 23rd August 2004 is filed and at Serial No.9, original Agreement dated 5th September 2004 is filed. What is sought to be placed on record by the defendant no.1 vide application Exhibit 97 is merely originals of those documents which are already filed on record along with the plaint by the petitioner/plaintiff. Hence, no infirmity can be found in the impugned order at Exhibit 97 allowing production of those documents.

7 In this view of the matter, the petition is devoid of substance and the said is dismissed.

Needless to mention that, if required, the plaintiff can move an appropriate application before the learned trial court for recalling witnesses, if he so desires, in the wake of production of originals of the documents by the defendant no.1.

(A. M. BADAR, J.)