

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2431 OF 2019

Marian Fernandes	...	Petitioner
Vs.		
M/s. Dossa Properties Pvt. Ltd.	...	Respondent

Ms Vidhi P. Thaker for Petitioner.
Ms Poonam P. Madhwani for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 26, 2019

P.C. :

Not on Board. At the request of Ms Thaker, taken up for admission.

2. Heard Ms Thaker, learned Counsel for the petitioner and Ms Madhwani, learned Counsel for the respondent at length.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the order dated 15.11.2018 passed by the learned Judge, Court Room No.8 of the Court of Small Causes at Bombay below exhibit-86 in R.A.E.Suit No.208 of 2007. By that order, the learned trial Judge allowed the application exhibit-86 and admitted letter dated 18.08.2011 along with copy of meter reading filed with application exhibit-45 and marked them as exhibit.

4. In support of this Petition, Ms Thaker has invited my attention to the order dated 07.07.2012 passed by the learned trial Judge below exhibit-45. The learned trial Judge partly allowed that application and permitted the plaintiffs to produce the document, namely certified copy

of meter reading of electric meter of the defendant from the year 2006, on record and lead additional evidence in proof of it as per the rules of evidence. She submitted that plaintiffs filed application exhibit-86 inter alia contending that plaintiffs had applied under Right to Information Act, 2005 to the BEST for obtaining information as regards consumption of electricity in the suit premises. The information was supplied on 18.08.2011. The said letter was produced on record along with application at exhibit-45. That application was partly allowed. The plaintiffs filed additional affidavit of evidence on 03.08.2012 and produced the meter reading furnished by the BEST Undertaking under the R.T.I. She submitted that plaintiffs did not produce original meter readings and produced the photocopies. She further submitted that electric meter reading should have been produced on record along with the additional examination-in-chief and got them exhibited that time only. After nearly lapse of 6 years, plaintiffs cannot be permitted to get these documents exhibited.

5. On the other hand, Ms Madhwani supported the impugned order. She submitted that on 03.08.2012, matter was adjourned to 21.08.2012 for filing say by the defendant on admissibility of documents. However, no say was filed. She submitted that while passing the impugned order, the learned trial Judge observed that P.W.1 was extensively cross-examined on these documents, which are sought to be examined and therefore, the learned trial Judge was justified in marking these documents.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the additional affidavit of evidence and in particular, paragraph 1 thereof shows that P.W.1 produced meter reading in respect

of the electric meter fixed at the suit premises. P.W.1 was cross-examined by the Advocate for the defendant. It was suggested to P.W.1 that the false electricity bills of the suit premises were produced to misguide the Court and to create evidence in favour of the plaintiffs. The witness denied the said suggestion. Order VIII, Rule 1-A (4)(a) reads thus,

“
Order VIII
Written Statement, Set-off and Counter-claim

1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him .-

- ...
(4) Nothing in this rule shall apply to documents-
(a) produced for the cross-examination of the plaintiff's witnesses, or,
(b) handed over to a witness merely to refresh his memory.”

7. In view thereof, once the witness of plaintiffs namely, P.W.1 was confronted with electric meter reading, the learned trial Judge, on his own, should have marked them as exhibits. As the learned trial Judge did not mark meter reading as exhibits, plaintiffs took out application exhibit-86, which is allowed by the impugned order. For the reasons stated in paragraph 5 of the impugned order, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)