

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7634 OF 2019

Shamim Ebrahim Botawala & anr .. Petitioners
vs
M.M.Exports Incorporated Pvt.Ltd & anr. .. Respondents

...
Mr.Sagheer A.Khan with Mr.Mohammed Shoeb
and Mr.Parth Zaveri i/b M/s Judicare Law Associates for Petitioners
None for Respondents

..

CORAM : S.C. GUPTE, J

DATE : 1st OCTOBER 2019

P. C.

1. This Petition challenges an order passed by the trial Court in an eviction suit filed by the petitioner (Original plaintiff). The order concerns admissibility of documents filed by the plaintiff's witness-PW1.

2. On 24.7.2019, this Court issued a notice to the respondents, notifying the respondents inter alia that the Petition may be disposed of finally on the returnable date. The respondents, however, do not appear. Learned counsel for the petitioner informs the Court that the respondents were not appearing even before the trial Court. In the premises, the Petition is taken up for hearing forthwith.

3. The controversy concerns about nine documents which were sought to be marked in evidence on the basis of oral testimony of PW1. The documents were not admitted in evidence but simply marked as articles for identification as 'X-1 to X-8' on the ground that some of those were photo-copies and not originals, whilst the others such as statements of rent were not proved in accordance with law.

4. In so far as documents at serial nos.5, 6 and 7 of the plaintiffs' list of documents, which were respectively marked as Article nos. X,X-1 and X-2, are concerned, PW1 tendered to the Court the original rent receipts, which were contained in the Rent Book, along with photo-copies of the rent receipts. In his evidence, PW 1 prayed that after comparing the originals with photo-copies, the originals may be returned, since the Rent Book containing original rent receipts also pertained to other tenants and was required for various other purposes. Though the Court saw the originals, the Court appears to have, however, passed this order on the basis that what was produced were photo-copies and not originals. The plaintiff's witness is indeed in possession of the originals. The originals are contained in the Rent Book. After verification of the copies by comparing them with the originals, the Court should have marked the originals and kept the copies on record, designating separate numbers to the copies, and required the plaintiff to produce the originals as and when required in the course of the trial. This is the usual procedure to be followed. Strangely, the Court appears to have refrained from comparing the documents, because they were photo-copies. The documents clearly

deserve to be admitted in evidence and will have to be accordingly marked.

5. Coming now to the three statements of arrears of rent, which were at serial nos.8,9 and 10 of the Plaintiff's list of documents and which were marked for identification as Article X-3, X-4 and X-5, it is apparent that these are merely statements of arrears of rent prepared by the witness himself. These cannot be marked as documents. They may come on record merely as the witness's own statements. It is to be clarified accordingly.

6. As regards documents at serial nos.1,2 and 3 of Exhibit 17, which were marked, respectively, as Article nos.X-6, X-7 and X-8, it is apparent that PW 1 has, in his additional affidavit of evidence in lieu of examination-in-chief (Exhibit 16), made out a case for leading of secondary evidence. It has been stated on oath that the original demand notice (Serial No.1) was personally received by PW1; he had made his initials saying that he was aware of the contents and that, therefore, photo-copies prepared by him should be exhibited as and by way of secondary evidence. The Court ought to have ordered admitting the photo-copies as secondary evidence.

7. As regards serial nos.2 and 3, they were originals, and yet not taken on record purportedly on the ground that they were not proved in accordance with law. These two documents are MGGM bills raised towards repair cess for the particular years mentioned

therein. The bills were originals; they were received by PW1; and he produced the same before the Court. There is no reason why they should not have been admitted in evidence. The matter was brought to the notice of the Court by the plaintiff by filing an Application for review of the order. The Application was rejected purportedly on the ground that the plaintiff was enjoined in law to produce the best evidence and the documents were not originals but photo-copies and they could not be admitted in evidence.

8. The impugned orders dated 13.2.2019 and 2.4.2019, accordingly, cannot be sustained. They are quashed and set aside. Para nos.5,6 and 7 of the impugned order dated 13.2.2019 are substituted by the following paras :

5. The original rent receipt bearing Bill No.1335, copy of which is at serial no.5 at Exhibit 15, is marked as Exhibit No.22. A photo-copy of this document is marked as Exhibit 22-A, and kept on record.

6. The original rent receipt no.671, copy of which is at serial no.6 at Exhibit 15, is marked as Exhibit No.23. A photo-copy of this document is marked as Exhibit No.23-A and kept on record.

7. The original rent receipt bearing bill no.1336, copy of which is at serial no.7 at Exhibit 15, is marked as

Exhibit 24. A photo-copy of this document is marked as Exhibit 24-A, and kept on record.

8. The originals of receipts marked as Exhibit 22,23 and 24 are returned to the plaintiff with a direction to produce the same in the course of the trial as and when the same are required by the Court.

9. The documents marked as Articles X-3, X-4 and X-5 shall continued to be marked as Articles and shall be treated as forming part of the original testimony of PW1.

10. Documents at serial nos.1,2 and 3 at Exhibit 17 are admitted in evidence and marked as Exhibit 25,26 and 27, respectively.”

9. The Writ Petition is disposed of accordingly.

(S.C. GUPTE, J.)

