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

***CRIMINAL APPLICATION NO.1064 OF 2018
IN
CRIMINAL APPEAL NO.18 OF 2016***

Abdul Wahid Khan ...Applicant

Versus

State of Maharashtra and Anr. ...Respondents

Mr.Vimlesh Singh, for the Applicant.

Mr.S.V.Gavand, A.P.P for the Respondent No.1 - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 16th APRIL, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks return of certain original documents i.e. Original Payment Receipt cum Declaration dated 28/12/2013 at Exhibit – 13, original Disputed Cheque No.752334 dated 30/04/2013 at Exhibit – 14, Original Cheque Return Memo dated 26/07/2013 and 26/07/2013 at Exhibits 15 and 16, Office Copy of Demand

Notice dated 20/08/2013 at Exhibit – 17, Postal Receipts dated 22/08/2013 at Exhibit – 18, Returned Envelop at Exhibit – 19 and Acknowledgment Card at Exhibit – 20 submitted by the Applicant in C.C.No.6103509/SS/2013 before the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai.

3. Learned Counsel for the Applicant submits that the Applicant had filed a criminal case being C.C.No.6103509/SS/2013 in the Court of the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai, as against the Respondent No.2 for the offence punishable under Section 138 of Negotiable Instruments Act. He submitted that in the course of evidence, the applicant had tendered the original documents in support of his case before the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai. He further submitted that as the learned Metropolitan Magistrate was pleased to acquit the Respondent No.2 of the offence punishable under Section 138 of Negotiable Instruments Act, the applicant filed an application seeking leave to file appeal in this Court. He submitted that on 5th January, 2016, the said application for leave to file appeal being Criminal Application No.516 of 2015 was heard and this Court granted leave, and the application was

treated as a Memo of Appeal and a direction was given to number it accordingly and the Appeal was admitted.

4. Learned Counsel for the Applicant submitted that the applicant has also filed a Summary Suit being Summary Suit No.1075 of 2016 in the Bombay City Civil Court at Mumbai. According to the learned counsel, the said original documents, which were filed in the trial Court are required by the applicant for filing his evidence in the said Summary Suit. He submitted that the applicant is ready to produce the original documents as and when the same may be required by this Court. He submitted that the applicant is ready to give an undertaking to that effect. He submitted that the Respondent No.2 was served privately, however, the endorsement on the packet shows that the same was unclaimed. He submitted that he will file an affidavit to that effect in the Registry of this Court on or before 26th April, 2019.

5. Perused the papers. It is not in dispute that the applicant had file a criminal case being C.C.No.6103509/SS/2013 in the Court of the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai in 2013. It is

also not in dispute that the original documents mentioned in paragraph 2 of this order were tendered in evidence by the applicant in the aforesaid criminal case. It appears that the applicant has also file a Summary Suit in the Bombay City Civil Court at Mumbai and the applicant requires the said original documents for production of the same before the said Court.

6. Accordingly, for the reasons stated in the application, the application is allowed, on the following terms and conditions :

ORDER

i) The original documents i.e. Original Payment Receipt cum Declaration dated 28/12/2013 at Exhibit – 13, original Disputed Cheque No.752334 dated 30/04/2013 at Exhibit – 14, Original Cheque Return Memo dated 26/07/2013 and 26/07/2013 at Exhibits 15 and 16, Office Copy of Demand Notice dated 20/08/2013 at Exhibit – 17, Postal Receipts dated 22/08/2013 at Exhibit – 18, Returned Envelop at Exhibit – 19 and Acknowledgment Card at Exhibit – 20 submitted by the Applicant in C.C.No.6103509/SS/2013, before the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai, be handed over to the Applicant, after retaining a xerox copy of the said documents;

ii) Whilst, returning the original documents, Registry to take the signatures of the applicant on the xerox copies of the documents, certifying them as true copies;

iii) Before the Registry hands over the original documents to the Applicant, the Applicant shall file an undertaking in the Registry of this Court that he will produce the said original documents, as and when required by this Court.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.