

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

WRIT PETITION NO.8363 OF 2019

Mr. Rehmatullah Khan

And Another

... Petitioners

Versus

Habib Hisein Karmali Patel

And Another

... Respondents

.....

Mr. A.A. Siddiqui a/w Ms. Farzana Sawant for the Petitioners.

Mr. P.J. Thorat for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATE : 3 SEPTEMBER 2019

P. C. :

. This writ petition challenges an order passed by the Court of Small Causes at Mumbai allowing Respondent No.1 (original plaintiff) to lead additional evidence.

2 The grievance of the Petitioners (original defendant nos.2 and 3) is that not only was additional evidence allowed to be led after the defendants had commenced and completed their arguments, but that a document purported to be a letter issued by Deputy Collector in support of the plaintiffs' case that the property, in which the suit premises are situate, is not declared as slum area, has been marked in evidence. In an ongoing trial, the Petitioners' evidence received subsequently, can always be admitted so long as the opponent has an

adequate opportunity to meet the case of the applicant by leading his own evidence. In the present case, defendant nos.2 and 3 have adequate opportunity to contest the plaintiffs' case urged through additional documentary and oral evidence, by cross-examining the plaintiffs' witness/es and also producing their own evidence. So also, mere marking of a document does not conclude the issue of authenticity of that document. It is always open to the opponent to contest the existence and authenticity of the document, either in cross examination or by leading his own evidence.

3 If and so long as Defendant Nos.2 and 3 have such opportunity, no infirmity can be found in the impugned order. In view of this position, which has now been clarified by this Court, learned Counsel for the Petitioners does not press his petition. The writ petition is, accordingly, disposed of as not pressed. In accordance with clarification noted above, the Petitioners (original defendant nos.2 and 3) shall be at liberty to produce their own evidence including oral evidence on a witness summons, as they may be advised. Any such application shall be considered by the trial court on its own merits.

(S.C. GUPTE, J.)