

## WRIT PETITION NO. 4955 OF 2014

## Versus

**Mr.S.R. Gupta a/w Ms. Neelam Gupta, Advocate for the Petitioner.  
Mr. A.R.Patil, APP for the State.**

**CORAM : S.S. SHINDE, J**  
**DATE : 15<sup>th</sup> July 2019**

P.C.

1. Heard learned counsel appearing for the petitioner. None appears for respondent No.1. Mr. A.R. Patil, learned APP appears for the State/Respondent No.2.
2. Being aggrieved by the order dated 24<sup>th</sup> September 2013 passed below Exh.9 and 30<sup>th</sup> September 2014 passed below Exh.20 by the Learned Metropolitan Magistrate, 20<sup>th</sup> Court at Mazgaon, Mumbai in C.C. No.1377/SS/2009, this petition is filed. By order dated 24<sup>th</sup> September 2013, the Trial Court rejected the application filed by complainant for permission to produce additional documents on record. By order dated 30<sup>th</sup> September 2014, the Trial Court also rejected the application filed by complainant for permission to re-examine P.W.-1.
3. The petitioner, who is the original complainant, has filed a

complaint against the first respondent. It appears that the first respondent is a borrower and he borrowed the loan amount from the complainant. The cheque issued by respondent No.1 for repayment of outstanding loan amount to the petitioner complainant was dishonored when deposited in bank. Therefore, complainant filed the complaint against respondent No.1.

4. It appears that the petitioner who is complainant, was examined and cross-examined, and thereafter the petitioner did file an application on 10<sup>th</sup> July 2013, praying therein for taking compilation of additional documents on record containing minutes book and register of resolution. It was further prayed that, after taking such compilation of documents on record, the petitioner be allowed to examine himself, so as to state the relevance of the aforesaid documents in relation to the subject matter of the complaint. The said application was rejected by the Trial Court on the ground that, no reasons are stated in the application, as to why the said documents are not produced on record at the time of examination of the complainant. After the said application was rejected, the complainant filed a fresh application praying therein to recall the order dated 24<sup>th</sup> September 2013. However, subsequently the second application was rejected on the ground that the Court cannot recall its earlier order.

5. Learned counsel appearing for the petitioner submits that, respondent No.1 is not attending the proceeding before the Trial Court and no

prejudice would be caused to the first respondent in case the complainant is given an opportunity to place the aforesaid documents on record. In support of aforesaid contentions learned counsel appearing for the petitioner relied upon the observations made by the Supreme Court in the Case of *Haryana State Cooperative Supply and Marketing Federation Limited Vs. Jayam Textile and another (2014) 4 SCC 704* and in particular Paragraph 6 thereof.

6. As already observed, in spite of service none appears for respondent No.1. It appears that the proceeding are pending before the Trial Court for a considerable period. However, as informed by the learned counsel appearing for the petitioner that, yet the recording of evidence is not complete. The documents which are sought to be placed on record by the petitioner are important and material documents in relations to the subject matter of the complaint. The said documents are described in the application, i.e. copy of the resolution dated 22<sup>nd</sup> January 2005, the original registered resolution of minute book No. 86 (s) of the complainant society containing the resolution No.7 passed in the meeting of the Board of Directors held on 22<sup>nd</sup> January 2005. As it is stated in the petition and also the application which was filed before the concerned court, that in absence of those documents, complainant may not be able to prove the case. In that view of the matter and since the recording of the evidence is not yet complete, an ends of justice would be met in case the Trial Court is directed to allow the complainant to place on record

aforesaid documents and examine himself in relation to the aforesaid documents. In that view of the matter, the impugned orders dated 24<sup>th</sup> September 2013 and 30<sup>th</sup> September 2014 passed by the Learned Metropolitan Magistrate, 20<sup>th</sup> Court at Mazgaon, Mumbai Court are quashed and set aside.

7. The Court of Learned Metropolitan Magistrate, 20<sup>th</sup> Court at Mazgaon, Mumbai is directed to allow the complainant to place the aforesaid documents on record without prejudice to the contention of the contesting respondent. After such documents are allowed to be placed on record, after seeking the response of the respondent, the complainant be allowed to examine himself, however, confined to the aforesaid documents, and the respondent should also be given opportunity to cross-examine the complainant.

8. With the above observations, the writ petition stands disposed of.

**[S. S. SHINDE , J]**