

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

WRIT PETITION NO. 10216 OF 2017

V. R. Patil & Ors.

..Petitioners

v/s.

Dr. Hemlata Arun Deshmukh

..Respondent

Mr. Vishwanath Patil a/w. Yuwraj Patil for the Petitioner.
Ms. Aarti Bhide for the Respondent No.1.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : MARCH 17, 2021.**

P.C.

1. The Petitioners have challenged the order dated 31st July, 2017 whereby ld. Judge has exhibited the documents listed in the list at Exhibit 10. The Respondent and the Appellant shall be hereinafter referred to as the plaintiff and the Defendant respectively.

2. The records reveal that the suit was initially filed before this Court and was subsequently transferred to the City Civil Court in view of increase in pecuniary jurisdiction. The Plaintiff had tendered his affidavit-in-evidence on 16.09.2013 and the matter

was posted for admission of documents. During the intervening period the Notice of Motion filed by the Plaintiff for leading secondary evidence and adducing/producing additional evidence/documents were rejected by the Court vide orders dated 23.12.2015 and 22.1.2016.

3. The records reveal that after the evidence of the Plaintiff (PW1) was recorded, the Plaintiff has filed a list of documents at Exhibit 10 along with the copies of four documents in the said list. The Defendants had objected production of the said documents on the ground that earlier motion for production of the documents was rejected. It was also stated that the documents were merely tendered with the list without any application.

4. The trial Court has discarded the objection and exhibited the documents for the reason that :

“ the case is fixed for evidence of the Plaintiff. The matter is old and is transferred from the Hon’ble High Court. Considering the nature of dispute and also the fact that the defendant is concerned with the documents at Serial Nos.1 and 2, they are exhibited. The documents at

Serial Nos.3 and 4 are referred in the plaint.

Hence the same are exhibited.”

5. The trial Court has not considered the fact that the case had proceeded far beyond the stage of producing documents under Order XIII and Rule 4, Order XVIII CPC. The Plaintiff had not filed any application giving reasons for non production of documents or to show the relevance of the documents listed in the list of documents. The Plaintiff has sought to produce these documents without disclosing the fact that the earlier motions for producing additional documents and leading secondary evidence were dismissed with reasoned orders. The trial Court has allowed the plaintiff to produce the documents by giving a good bye the well set procedure. The impugned order is nothing but an arbitrary exercise of the powers and hence cannot be sustained.

6. However, in the interest of justice, an opportunity is given to the Plaintiffs to file an application for production of additional documents, if they so desire. The ld. Judge, shall consider the admissibility of the said documents and whether the documents are relevant to decide the issue in the suit, shall thereafter decide

the application in accordance with law.

7. Writ Petition stands disposed of in the above terms.

8. The parties are directed to appear before the trial Court on
1st April, 2021.

Prasanna
P.
Salgaonkar

Digitally signed
by Prasanna P.
Salgaonkar
Date:
2021.03.22
19:40:55
+0530

(ANUJA PRABHUDESSAI, J.)