

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9046 OF 2021**

Smt. Latha Viswanathan

...Petitioner

Versus

Harishchandra R. Poojari & Ors

...Respondents

Mr. T. Antony Koshy, for the Petitioner.

CORAM: Smt. Bharati Dangre, J.

DATED: 17th December 2021

P.C.:-

1. Heard the learned Counsel for the Petitioner who is aggrieved by an order dated 03.04.2021 passed by the Principal Judge, City Civil & Sessions Court, Dindoshi, Mumbai on Notice of Motion No. 609 of 2021 taken out by the Defendant No. 2 in Special Civil Suit No. 5364 of 1993.

2. With the assistance of the learned Counsel for the Petitioner, I have perused the paper-book, it is apparent that the Notice of Motion is taken out seeking following reliefs:

“(a) That this Hon’ble Court be pleased to re-open the

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evidence of the Defendant No. 2 in the above matter and permit the Defendant to exhibit documents from the compilation of documents which were inadvertently missed out at the time of evidence of Defendant No. 2 by verifying signatures u/s. 45 & 73 of the Evidence Act against proved documents, and also by referring to other evidence.”

3. The Affidavit filed in support of the Notice of Motion, refer to the sequence of events which commenced from the year 1987 and it refers to the letter dated 03.08.1989 addressed to the Defendant No. 2, along with Architect’s drawings who had communicated, the change of flat number. The Affidavit further states that the Defendant No. 2 had produced the original of the agreement dated 08.12.1985, re-confirmed by the registered deed and the said agreement along with compilation of documents was already exhibited. The Affidavit further state that the document was signed by Francis Coelho, the Proprietor of Defendant No. 1 in the capacity of developer. The signature of Mr. Coelho was also produced through the certified true copy of application dated 23.04.1987 (Exhibit 63), which has been brought on record through D.W. 4. In the given circumstances, the Notice of Motion is taken out with a prayer that the evidence of Defendant No. 2 be re-opened and he should be afforded an opportunity to have the documents marked.

4. The impugned order is passed on the said Notice of Motion and the learned Judge on consideration of the chronology and sequence of events has noted that the Notice of Motion seek re-opening of evidence and for permission to exhibit the documents, from the compilation of documents which were inadvertently missed out when the evidence of Defendant No. 2 was recorded. Recording that at an earlier occasion the Defendant No. 2 has filed two applications vide Exhibit 69 and Exhibit 69A, upon which liberty was granted to the Defendant No. 2 to resort to the due process of law, if he was desirous of proving the documents, the recourse that is adopted is the present application.

5. The learned Judge has rightly recorded that the said order granting liberty was passed on 10.09.2018 and no steps were taken by him but while the matter proceeded to the stage of arguments, and noting that the Suit is pending since 1993 and is now at the fag-end and Defendant Nos. 2 to 6 had argued on almost nine sessions, the attempt to fill up the lacuna by filing the Notice of Motion has been deprecated. The learned Judge has rightly recorded that there is no sufficient justification offered to re-open the evidence of Defendant No. 2, since this would further prolong the proceedings in the suit which is pending since the year 1993. On recording that there is no satisfactory reason to grant re-opening the evidence of Defendant No. 2, the Notice

of Motion has been rejected. Considering the delay and the factum of the pendency of the suit since 1993, without any sufficient reason to ask the Defendant No. 2 to be re-examined the Notice of Motion has been rightly rejected.

6. The order do not call for any interference. The Writ Petition is dismissed.

(Smt. Bharati Dangre, J.)