

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.562 OF 2020**

Gulshan Kishanchand Lamba .. Petitioner
Versus
Municipal Corporation for Greater
Bombay & Ors. .. Respondents

...

Ms.Madhavi S. Nalawade for the Petitioner.
Ms.Shilpa Redkar for the Respondent No.1/MCGM.
Mr.Arvind Pinto for the Respondent No.5.

...

**CORAM: BHARATI DANGRE, J.
DATED : 29th NOVEMBER, 2021**

P.C:-

1. The petitioner, who is the original plaintiff, is aggrieved by the action of the City Civil Court, Bombay in accepting the photo-copies of the documents produced by respondent No.5/defendant No.5, the co-operative society and exhibiting the same.

Learned counsel for the petitioner submits that in the suit, which was filed by the plaintiff, the evidence of the plaintiff was over and respondent No.5 filed affidavit of evidence alongwith list of 11 documents, which were not the documents in original, but only xerox copies of the documents. The petitioner objected to the said documents being exhibited. On 15/10/2019, learned Judge allowed the said documents to be exhibited vide Exhibits 60 to 68.

2. Learned counsel for the respondent No.5 gracefully submits that the society is not in possession of the original documents and, therefore, the photo-copies were produced on record. He, however, conceded to the legal position that permission ought to have been taken from the Court to adduce secondary evidence on the ground of non availability of the documents with the society. Learned counsel submits that he would move an appropriate application for leading secondary evidence, in support of the documents on which the society claims to place reliance. Upon such an application being filed, it shall be duly considered by the learned trial court. However, the in manner the learned Judge has proceeded in exhibiting the documents is not the permissible course available to him when no originals are produced on record. Necessarily the order dated 15/10/2019 is quashed and set aside, reserving the liberty to respondent No.5/defendant No.5 to seek permission from the learned trial court to adduce secondary evidence.

3. With the aforesaid observations, the writ petition is allowed.

(SMT. BHARATI DANGRE, J.)