

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3076 OF 2017

**SHRI MAHAVIR SWAMI DIGAMBAR JAIN MANDIR THROUGH ITS
TRUSTEES ANIL DHIRAJMAL KATARIYA AND OTHERS
VERSUS
MOHANRAO TRIMBAK BALASAHEB BHARDE AND OTHERS**

...
Advocate for Petitioners : Mr. A. D. Kasliwal
Advocate for Respondent No.1 : Mr. V. P. Latange
...

CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 21-09-2016, passed by the learned Civil Judge Junior Division, Court No.7, Ahmednagar, on application filed below Exhibit-88 in Regular Civil Suit No.558/2008. Under the said order, application filed under Section 65(c) of the Evidence Act seeking permission to lead the secondary evidence is rejected on the ground that the applicant has not given any proof to prove the basic ingredient of leading secondary evidence, that the original is lost.

2. The learned counsel for petitioner by placing reliance on the decision of the Hon'ble Apex Court in **Dhanpat Vs. Sheo Ram (DECEASED) Through Lrs. & Ors.**, reported in (2020) 16 SCC 209, as well

as the decision of the Learned Senior Judge of this Court in case of **Karthik Gangadhar Bhat Vs. Nirmala Namdeo Wagh and Another**, reported in 2018(1) Mh.L.J. 726, state that the application is not necessary requirement for leading secondary evidence and the foundation can be lead at any stage of the proceeding including when the plaintiff/defendant is in the dock.

3. In the wake of the aforesaid, the learned counsel for the petitioner, on instructions, seek withdrawal of the writ petition with liberty to place the foundational facts for leading secondary evidence as and when the stage arises.

(SMT. BHARATI DANGRE, J.)