

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4473 OF 2022

SHAIKH ABU @ SHEKHAR KUMAR ABDUL RAZAK
VERSUS
PRAJAKTA SURESH DHAS

...
Advocate for Petitioner : Mr. S.K. Chavan

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 21st April, 2022

ORDER :

1. The respondent/original plaintiff filed application (Exh.34) seeking permission to lead secondary evidence in respect of the documents enclosed as per list. The said application is disposed of by the Trial Court holding that "*law does not require to a party to file an application and sought permission to lead secondary evidence. The way outs are already provided by the Code of Civil Procedure and the Indian Evidence Act, if a party wishes to lead secondary evidence. The plaintiff may avail those remedies*".

2. The petitioner/defendant filed application (Exh.40),

under Order VII rule 11(A) of the Civil Procedure Code for rejection of plaint, on the ground that, the suit of the plaintiff is based on the news items in the daily newspaper (शेतक-यांचे वादळ) published by the petitioner/defendant, but the plaintiff has not submitted the newspaper, on which the suit is based and, therefore, the suit is not maintainable and the plaint may be rejected. This application is rejected by the Trial Court holding that, no case is made out by the plaintiff to reject the plaint.

3. In the order passed below Exh.34, the Trial Court has adopted proper approach in holding that, there is no need for the plaintiff to file separate application to lead secondary evidence. The plaintiff can lead secondary evidence in accordance with the provisions of the Code of Civil Procedure and Indian Evidence Act.

4. The petitioner/defendant is entitled to challenge the secondary evidence led by the plaintiff at the time of final arguments, contending that, the secondary evidence led by the plaintiff is not proved by him in accordance with law and the same is not admissible. The same will be considered by

the Trial Court at the time of final hearing of the suit.

5. The Trial Court is justified in holding that, no case is made out by the defendant for rejection of the plaint, while rejecting the application (Exh.40) filed under Order VII rule 11(A) of the Code of Civil Procedure.

6. There is no illegality or perversity found in both the impugned orders passed by the Trial Court. The petitioner has failed to make out the case to warrant exercise of extraordinary writ jurisdiction.

7. The learned advocate for the petitioner placed reliance on ***Jagmail Singh and Another v. Karamjit Singh and Others in (2020) 5 SCC 178***, wherein it is held by the Apex Court that, "*Factual foundational evidence must be adduced showing reasons for not furnishing evidence. Mere admission in evidence and making exhibit of a document not enough as the same has to be proved in accordance with law.*"

8. As is observed earlier, the petitioner is entitled to challenge the secondary evidence led by the plaintiff on the

ground that, it is not proved in accordance with the law and therefore, the same is inadmissible. In that view of the matter the above citation since is rendered in different facts, is of no help to the petitioner.

9. For the aforestated reasons, writ petition is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE