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

WRIT PETITION 6375 OF 2019

Shree Rajhans Co-operative Housing Society
Limited – through its Secretary/ Chairman ... Petitioner.

Versus

1. Shamrao Govind Bhosale (deceased)
through LR. :
 - 1.1. Smt. Vaijayanta Shamrao Bhosale & Ors.
2. Thane Municipal Corporation & Ors. ... Respondents.

Mr. Jayesh M. Joshi, Advocate for the Petitioner.
Mr. Anup S. Kulkarni, Advocate for Respondents 1, 3 & 4.
Mr. Mandar Limaye, Advocate for Respondent 2.

CORAM : ROHIT B. DEO, J.

DATE : JULY 12, 2022

P.C. :-

1. Petitioner is the Plaintiff in Regular Civil Suit 1293 of 2012 which is instituted for enforcement of the rights and obligations under Maharashtra Ownership of Flats Act, 1961.
2. The Plaintiff filed on record the affidavit-in-lieu of examination-in-chief of Mr. Kishor Madhukar Tarwade, who is the Chairman of the Plaintiff Society. According to the Plaintiff, a copy of the resolution dated 08.01.2012, authorizing the

said witness to depose on behalf of the Plaintiff Society, was also placed on record.

3. During the course of the cross-examination, the learned counsel for Defendants 1, 3 and 4 suggested to the said witness that the resolution at Exhibit 42 did not authorize the witness to depose. It appears that the said witness conceded the lack of authority. Be that as it may, the Plaintiff preferred application exhibit 51, seeking recall of the witness and permission to produce the register of the resolutions and the original resolution dated 30.09.2018. This application is rejected by the order dated 29.01.2019, as is corrected by the order dated 06.02.2019. The trial court Judge reasoned that if the witness is recalled the admission which is extracted shall be withdrawn.

4. I do not see any error as such in the said observation recorded by the learned trial Judge.

5. That apart, I do not see any real prejudice to the Plaintiff inasmuch as the register of resolutions and the original resolution dated 30.09.2018 can be proved by examining the other witness and it would not be necessary to particularly

recall PW-1.

6. The learned counsel for the Petitioner points out that the application as a whole is rejected; with the result the production of the register of resolutions and the original resolution supra, is also disallowed.

7. In my considered view to the extent the Plaintiff is not permitted to produce the documents on record, the order impugned will have to be set aside.

8. It is made clear that while production of documents is allowed, every objection touching the relevance, admissibility and probative value of the documents is left open for the trial Court to consider on the basis of the evidence on record.

9. The order impugned is confirmed to the extent the Plaintiff is not permitted to recall PW-1 and is set aside to the extent the production of documents is disallowed.

10. Petition is disposed of in the aforesaid terms.

(ROHIT B. DEO, J.)