

H. H. Sawant

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

WRIT PETITION NO. 15434 OF 2022

Shivaji Shambhu Erakshetty & Anr. .. Petitioners
Versus
Vaishali Ramchandra Jadhav & Ors. .. Respondents

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- Mr. Nilesh Wable for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 13, 2022.

P.C.:

1. Heard Mr. Wable, learned Advocate for Petitioners.
2. Perused the impugned order dated 22.03.2022 below Exh. 171 passed by 7th Joint Civil Judge Senior Division, Solapur in Regular Civil Suit No. 117 of 2012.
3. Admittedly Defendant No.1 has expired in the interregnum. The only contesting defendant as argued by Petitioners is Defendant No.2.
4. Plaintiff made an application for production of documents viz. copy of dishonored cheque, memo, office copy of notice and the Hamipatra (Agreement) which was in the custody of Defendant No.3 according to the Plaintiff.
5. Mr. Wable, learned Advocate for Petitioners submitted that Defendant No.3 resided with Defendant No.1 until his demise and therefore it is the Plaintiff's impression that these documents are in Defendant No.3's custody. The learned Trial Court while deciding

Exhibit-171 has unequivocally stated that the purpose of referring to and relying upon the first three documents was not stated in the application and therefore the Trial Court rejected the application of the Plaintiff. Insofar as the Hamipatra is concerned, the Trial Court has opined that in the absence of seeking a direction for issuance of notice for production of the said document (Hamipatra) to Defendant No.3, instead the Plaintiff has preferred the said Application. That apart the Trial Court has also held that Petitioner will be at liberty to lead secondary evidence in accordance with law.

6. Mr. Wable submitted that Plaintiff shall seeks issuance of the requisite notice for production of the fourth document i.e. Hamipatra to the Defendant No.3. Insofar as the other three documents are concerned, the Plaintiff shall make appropriate application stating the purpose for referring to and relying upon them with respect to the fact of dishonour of cheque and its consequences. In the event, if the Plaintiff makes such an application, the same shall be decided by learned Trial Court on its own merits and in accordance with law. Plaintiff shall also be at liberty to lead secondary evidence as opined, decided and concluded by the learned Trial Court in its order dated 22.03.2022.

7. Impugned order is sustained and calls for no interference. Liberty to Petitioners / Plaintiffs to take out appropriate Application strictly in accordance with law.

8. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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