

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

WRIT PETITION NO.8804 OF 2022

United Spirits Limited

..Petitioner

Versus

Haresh Chuhamal Chandiramani

..Respondent

Mr. Mayur Khandeparkar a/w Vijay Purohit & Samkit Jain i/by P &
A Law Offices, for the Petitioner.

Mr. Asad Bukhari, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th AUGUST, 2022

PC.

1. After the eviction suit being TE & R Suit No.369/390 of 2001 was decreed, proceedings for mesne profits were taken out. In the said proceedings, DW-2 was in the witness box. Trial Court has discarded his evidence to the extent of report authored by him on the ground that earlier witness i.e. DW-1 – Shrivardhan Sunil Deshpande in his cross-examination has admitted that no architect ever was appointed.

2. The said order is under challenge which is passed on 18th June, 2022.

3. Counsel for the petitioner Mr. Mayur Khandeparkar while assailing the said order would urge that the Court below has

committed an error of procedural law, as the document ought not to have been discarded merely on the ground of same being not admitted by the earlier witness i.e. DW-1. According to him, DW-2 author of the document has proved the same, the Court is left with no other option but to exhibit the same. According to him, validity of the said document can be gone into at the time of analyzing the evidence.

4. Counsel for the respondent/decreed-holder would support the order impugned and urge that witness DW-1 has never deposed that Architect had prepared any valuation report. His further contention is that once DW-1 has come out with such case in his evidence that architect was never appointed, the Court was justified in rejecting the contention for exhibiting the report. He would urge that the issue of proving of contents of documents can be gone into at the time of final hearing of the suit.

5. I have appreciated the submissions.

6. With the assistance of learned counsels, I have perused the examination-in-chief of DW-2 – Amol Bora, who in paragraph 5 of the examination-in-chief has specifically mentioned about drawing of Valuation Report dated 1st November 2021.

7. Once he has come with such claim on oath, it was expected of the Court to exhibit the said document without going

into appreciating the merits, evidentiary value of the such document. Such appreciation of document on merits can be looked into at the stage of final hearing of the proceedings and not at this stage. The Court below while rejecting the prayer for exhibiting the document has looked into the contradictions from the testimony of DW-1 and DW-2 which in any case is not permissible. Once the author of report DW-2 has proved the report, the Court below ought to have exhibited the same.

8. As such, the order impugned to the aforesaid extent passed on 18th June, 2022 is hereby quashed and set aside. The document at Sr. No.1 being Valuation Report dated 1st November, 2021 is directed to be exhibited.

9. However, it is clarified that in view of submissions of Mr. Asad Bukhari, counsel for respondent, it is clarified that merely exhibiting the document does not mean proving the contents thereof, as same is an independent issue. Apart from above, all the contentions of the respondent to the admissibility of the evidentiary value of such document is kept open to be gone into at the stage of final hearing of the proceedings.

10. The petition as such stands allowed to the aforesaid extent.

11. Counsel for the respondent invites attention of this

Court to the fact of pendency of the mesne profits proceedings for last more than ten years.

12. In view of litigation policy, hearing of the proceedings is expedited.

[NITIN W. SAMBRE, J.]