

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

WRIT PETITION NO.10688 OF 2015

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Krushna Madhav Wankhede

..Petitioner

Versus

Smt. Sumitra Jayvant Patil and Ors.

..Respondents

Mr. Ajay S. Patil, for the Petitioner.

Mr. Omkar Nagvekar i/by Mr. P. R. Arjunwadkar, for Respondent
No1 to 6.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th JANUARY, 2022

PC.

1. Heard Mr. Ajay Patil, learned counsel for the petitioner.
2. The exception by this petition is to the impugned order passed below Exh.77 wherein the prayer by the petitioner/defendant for permission to lead secondary evidence under the provisions of Section 65 of the Indian Evidence Act is rejected.
3. This Court vide order dated 10th November, 2014 passed in Writ Petition No.8932 of 2014 has confirmed the earlier order of the Court below passed on 31st July 2014 which is delivered on the very same issue, however, granted liberty to the petitioner to approach afresh to the Court below by completing the pleadings in tune with Section 65 of the Evidence Act.

4. Mr. Ajay Patil, learned counsel has invited my attention to the impugned order thereby pointing out that the Court below has committed an error in not appreciating the aforesaid order granting liberty in favour of the petitioner.

5. Counsel for the respondents strenuously opposed the prayer on the ground that the perusal of the application moved by the petitioner would reflect that necessary ingredients of Section 65 of the Evidence Act cannot be inferred. According to him, this attempt on the part of the petitioner is nothing but to prolong the proceedings in the civil suit.

6. I have considered aforesaid submissions.

7. Admittedly, Court below while passing impugned order below Exh.77 has lost sight of the order of this Court dated 10th November, 2014 passed in Writ Petition No.8932 of 2014 and proceeded to record finding that the petitioner's application Exh.77 deserves to be rejected.

8. Once the petitioner was granted liberty by this Court to approach afresh before the Court below to earlier lead secondary evidence in tune with Section 65 of the Evidence Act, the Trial Court below was to be sensitive with the same rather the court below has passed order below Exh.77 without considering order dated 10th November, 2014. As such, Petition stands partly allowed.

9. The impugned order passed below Exh.77 is hereby quashed and set aside.

10. Application Exh.77 is directed to be decided by the Court below afresh having regard to the order passed by this Court dated 10th November, 2014.

11. Hearing of the aforesaid application is expedited, as the same is pending more than seven years.

[NITIN W. SAMBRE, J.]