

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

WRIT PETITION NO.12303 OF 2022

Rekha Suresh Mehta

...Petitioner

Versus

Todi Industries Private Limited

...Respondent

...

Mr. Amrut Joshi with Mr. Sujit Lahoti, Mr. Aman Kacharia i/b. Mr. Parth P. Shah i/b. M/s. Sujit Lahoti and Associates for the Petitioner.

Mr. Bhushan Deshmukh with Mr. Sanjeev K. Raplu for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th OCTOBER, 2022.

P.C. :-

1. The Petitioner herein has challenged order dated 09/10/2021 in RAE Suit No.869/2193 of 1993, wherein the learned Judge, Small Causes Court allowed the Respondent –Plaintiff to produce document at Serial Nos.1 and 5 in the list Exhibit-52.

2. Mr. Amrut Joshi, learned counsel for the Petitioner submits that the suit was filed in the year 1993. The documents sought to be produced were not entered in the list and were not produced at the time of presentation of the plaint. He submits that the plaint has been amended several times, despite which no leave was sought to produce

these documents. The documents are sought to be produced at the stage of evidence. He submits that the Respondent has not shown any sufficient cause for not producing the documents at earlier stage. He further contends that there are no pleadings to indicate that said U.C. Bangera or the father of the Respondent -Plaintiff was authorized by the Corporation to sign or depose on behalf of the Plaintiff. Hence, the Plaintiff cannot be permitted to adduce evidence beyond the pleadings. He submits that the Trial Court has erred in holding that there was no such requirement prior to the amendment of the CPC. Learned counsel for the Petitioner contends that the documents are fake and fabricated. He submits that a valuable right has accrued in favour of the Petitioner which has been taken away by allowing the application belatedly without any sufficient cause. He has relied upon the decision of the Supreme Court in *Chakreshwari Construction Private Limited vs. Manohar Lal (2017) 5 SCC 212*, and decision of Delhi High Court in *Rajkumari (dead) Thr L.R. Veena Devi vs. Ashok Kumar and Anr. CM(M) No.718/2017* and decision of this Court in *New Shelter Enterprises and Ors. vs. Meenakshi w/o Sudhir Gupta and Anr. 2018(2) Mh.L.J.*

3. Mr. Bhushan Deshmukh, learned counsel for the

Respondent does not support the observation of the Trial Court that there was no such provision in the statute prior to 2000 amendment. He submits that the Plaintiff had sought to produce the said documents along with affidavit-in-evidence. Since the documents were not listed along with the plaint, the Trial Court had granted leave to the Plaintiff to file necessary application under Order VII Rule 14(3) of the CPC. He further submits that the cross examination of the Plaintiff has not commenced and no prejudice has been caused to the Petitioner by allowing the said documents. He further submits that the documents are relevant to decide the issue and that the Trial Court has considered this fact while allowing the application.

4. Learned counsel for the Respondent submits that the question whether the documents are fake or genuine cannot be considered at this stage and it is a matter of trial. In this context, he has relied upon decision of the Hon'ble Supreme Court in ***Sudhir Kumar @ S. Baliyan vs. Vinay Kumar G.B. in Civil Appeal No.5620 of 2021.***

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. Order VII Rule 14 of the CPC stipulates that a document which is in the possession or power of plaintiff is required to be filed with the plaint. Rule 3 to order VII permits belated filing of such documents with the leave of the Court. Similarly, Order XLI Rule 27 also permits filing additional evidence at the appellate stage, provided the requirements of the Rule are fulfilled.

7. In the instant case, the Respondent-Plaintiff had filed a suit for eviction. The plaint was signed and verified by U.C. Bangera. The Plaintiff has sought leave to produce resolution under which U.C. Bangera and upon his death Suresh Sanwarmal Todi was authorised to file the suit and depose on behalf of the Corporation. The Respondent-Plaintiff is a company and the documents sought to be produced are relevant to prove that they had sufficient authority to represent the Respondent-Plaintiff. The witness is not yet cross examined and no prejudice will be caused to the Petitioner-Defendant. Furthermore, the genuineness of these documents cannot be determined at this stage and the same is a matter of trial.

8. Under the circumstances, the learned Judge cannot be

faulted for allowing production of documents, which was essential to advance the cause of justice rather than to non-suit the Plaintiff on technical grounds. Essentially it is substantive justice which must always prevail over procedural or technical pleas. The Trial Court has followed this rule. I find no infirmity in the order. Hence, the Petition is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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