

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 15015 OF 2022**

Mewalal Anganu Vishwakarma

.. Petitioner

Versus

Bharti Murali Talreja and Anr.

.. Respondents

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- Mr. D.R.Singh a/w. S.H.Singh i/by R.B.Singh & Associates for Petitioner
 - Mr. Dilip Rai a/w. Mr. Pramod Gautam for Respondents
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CORAM : MILIND N. JADHAV, J.**DATE : DECEMBER 12, 2022.****P.C.:**

1. Heard Mr. Singh, learned Advocate for Petitioner
2. The order impugned in the present Writ Petition is dated 05.11.2022 has been passed on application preferred by the Plaintiff who is Respondent No.1 in the present Petition for allowing him to file additional affidavit of examination-in-chief to lead secondary evidence under Section 65(c) of the Indian Evidence Act alongwith documents thereof.
3. It is Plaintiff's case that certain relevant documents which do find mentioned in the suit plaint are not traceable. Plaintiff approached the Borivali Police Station with a witness summons to produce the original documents which was a written complaint dated 25.11.2013. Plaintiff approached the authority i.e. Borivali Police

Station for seeking Certified Copy of the said documents but was informed that the said documents were destroyed. However, since the said documents were destroyed by Police Station, Plaintiff was in a position to only produce a photocopy of the same and therefore filed application for leading secondary evidence.

4. Learned Advocate has drawn my attention to the application of the Plaintiff for allowing the Plaintiff to file additional affidavit of evidence and to lead secondary evidence of the documents under Section 65(c) which is at page No. 19 Exhibit-A to the Petition.

5. Perusal of the said application indicates that such application has not been filed by Plaintiff. Mr. Rai, learned Advocate for the Plaintiff i.e. Respondent No.1 (Bharti Murali Talreja) submitted that the application was filed by Advocate for the Plaintiff. Averments made in the application however state that the application filed by the signatory of the application be allowed. The signatory admittedly is the Advocate.

6. While considering the said application, learned Trial Court has not noticed the above fact and has proceeded on the basis that the application has been filed by Plaintiff and allowed the application. Petitioner (Defendant) in the suit is therefore aggrieved and before this Court.

7. In view of the admitted fact that the application seeking direction of the Court to lead secondary evidence under Section 65(c)

has not been filed by Plaintiff, the impugned order stands quashed and set aside.

8. At the request of Mr. Rai, learned Advocate for Respondent No.1, the Respondent No.1 is permitted to make a fresh application in accordance with law before the Trial Court for the purpose of leading secondary evidence, if permissible, and in accordance with law. In the event if such application is made, the same shall be dealt with by the Trial Court on its own merits after hearing the Petitioner.

9. Writ Petition is allowed in the aforesaid terms.

10. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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KILAJE

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by SONALI
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