

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6974 OF 2018

Annappa Siddappa Sangwe And Another	Petitioners
Versus	
Dhanraj Maharudra Molgire	Respondent

Mr. S.N. Lale Yelwatkar, Advocate for the petitioners.
Mr. D.A. Mane h/f. Mr. Milind Patil, Advocate for the respondent.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JUNE, 2023

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, the petitioners impugn the order passed by learned 3rd Joint Civil Judge, Senior Division, Latur, below Exhibit-73 in Special Civil Suit No. 44/2014, thereby rejecting the application filed by the petitioners for production of electronic evidence.

2. Respondent/plaintiff filed suit for recovery of amount of Rs. 15,00,000/- from the petitioners/defendants. By filing written statement defendants opposed the suit. After recording evidence of the plaintiff, present application Exhibit-73 is filed by the defendants stating that they have recorded conversation of Vishwanath Shinde and Petitioner No. 1 in his mobile and said conversation is downloaded in the pen drive and CD and same is

prepared at Rahul Digital Photo Studio, Ambejogai, Latur, and they may be permitted to produce said CD and pen drive of the conversation and same may be read in the evidence. Said application is opposed by the plaintiff stating that the application is filed at belated stage and same is without following procedure. The Trial Court has rejected the application holding that the procedure contemplated in section 65B of the Indian Evidence Act, 1872 (for short 'said Act') is not followed by the defendant.

3. Heard the learned advocate for the petitioners and learned advocate for the respondent. Perused the memo of writ petition, annexures thereto, impugned order and the citations relied on by both the learned advocates for the parties.

4. Learned advocate for the petitioners by relying on *Shafhi Mohammad vs. State of Himachal Pradesh*, (2018) 2 SCC 801 submits that, it is held by the Apex Court that following procedure under section 65B is not always mandatory. He therefore submits that the Trial Court has committed an error in rejecting the application filed by the petitioners.

5. Learned advocate for the respondent, on the other hand, opposed the petition contending that there is no pleading in the written statement of the defendants about said conversation and in absence of pleading evidence cannot be led.

6. Perusal of written statement of the petitioners/defendants reveals that there is absolutely no averment in respect of alleged conversation. The petitioners are also not in a position to show how the conversation between third person i.e. Vishwanath Shinde and present petitioners is relevant for the purpose of deciding the suit. Admittedly, the conversation is not between plaintiff and the defendants. In that view of the matter, said conversation is not relevant for decision of the suit. There is merit in the argument of the learned advocate for the respondent that in absence of pleadings and since the petitioner has failed to show nexus and relevancy of such evidence, order impugned in the present petition is not liable to be disturbed.

7. Though, the Trial Court has rejected the application for non compliance of conditions under section 65B of the said Act, for the aforesaid reasons, the impugned order is not liable to be disturbed, since, the petitioner is trying to bring on record irrelevant evidence. There is no merit in the writ petition. The writ petition is therefore dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]