

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

CRIMINAL WRIT PETITION NO.681 OF 2023

M/s. Gourmet Renaissance Pvt. Ltd. & Ors. Petitioners

versus

State of Maharashtra & Anr. Respondents

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- Mr. Kartik Garg a/w Bhakti Bhanushali i/b. Sonal Doshi & Co., Advocate for Petitioner.
- Mr. Arfan Sait, APP for the State/Respondent No.1.
- Ms. Sushama Satpute a/w Shakuntala Shetty i/b. Satpute and Shetty Associates, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th SEPTEMBER, 2023

P.C. :

1. The Petitioners are the original accused in S.C.C. No.6352 of 2017, before the Judicial Magistrate First Class, Nashik, facing prosecution u/s 138 of the Negotiable Instruments Act. The Trial proceeded and the complainant's witness is being examined. During the course of examination, certain documents were produced on record. They were given exhibit numbers. The Petitioners have objection for exhibiting

those documents. The prayer made in this Petition is restricted to setting aside the order exhibiting the photocopies of the documents at Ex.38 to 43 and 54. Those documents are as follows:

Ex.38 – Resolution giving authority to file complaint.

Ex.39 – Another resolution giving authority to file complaint.

Ex.40 – Loan application.

Ex.41 – Sanctioning of loan and scrutiny statement.

Ex.42 – Promissory note.

Ex.43 – Loan agreement.

Ex.54 – Account statement.

2. Learned counsel appearing for the Respondent No.2 i.e. the original complainant submitted that the original documents regarding Ex.38, 39, 41, 42 and 43 are available with the bank and those can be produced before the Court and by comparing with the original, their photocopies can be taken on record. She submitted that Ex.40 is the application for loan and the original is filed in a different Court. The bank can make an application for certified copy and necessary procedure can be followed to

take the secondary evidence on record in respect of Ex.40. Ex.54 is in the form of electronic record and by following provision of section 65-B of the Indian Evidence Act, even that document can be brought on record.

3. I have considered these submissions. Learned counsel for the Petitioner has relied on the judgment of the Hon'ble Supreme Court in *Suo Motu Writ (CRL) No.1/2017, In re : To Issue Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Vs. State of Andhra Pradesh and Others* wherein it was directed that the presiding officer should decide the objections to question during the course of the proceeding, or failing it at the end of the deposition of the concerned witness.
4. These guidelines were issued by the Hon'ble Supreme Court so that the cross-examination is restricted to the admissible documents.
5. Considering these documents and submissions made by learned counsel for the Respondent No.2 regarding availability of the documents, the Petition can be decided in the following terms.

6. Though the copies at Ex.38 to 43 and 54 are already exhibited, the Respondent No.1 is permitted to produce the original documents in the Court for comparison with the photocopies which can be exhibited and read in evidence by following provisions of the Evidence Act. Their admissibility shall be decided by the trial Court before the cross examination of that witness commences.
7. Separate exhibits Nos. be given to those documents, if necessary. The admissibility of the exhibited document at Ex.38 to 43 and 54 would be subject to production of the original documents or certified copies permissible to be tendered under the Evidence Act. The question of admissibility shall be decided before commencement of cross examination of that witness.
8. The petition is accordingly disposed of.

(SARANG V. KOTWAL, J.)