

Nikita

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

WRIT PETITION NO.12115 OF 2023

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Shreyas Dattatraya Thorat and Anr. ... Petitioners

V/s.

Raghunath Pandharinath Thorat and
Ors. ... Respondents

Mr. Kuldeep U. Nikam for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 3, 2023

P.C.:

1. This petition under Article 227 of the Constitution of India challenging the order dated 26th June 2023, permitting plaintiff to lead secondary evidence in respect of lease agreement dated 19th August 1985, and possession letter dated 8th September 2000.

2. The petitioners have challenged the order on the ground that the plaintiff has failed to prove that the documents are lost by the plaintiff or the ingredients of Section 65 of the Evidence Act, 1872 are not fulfilled.

3. It is now well settled that permission of the Court before leading secondary evidence is not required. Party is entitled to lead oral evidence in relation to proof of documents, after conclusion of the Trial, if the Court comes to the conclusion that the ingredients

of Section 65 are not fulfilled, the Court cannot rely on the documents which are sought to be brought on record.

4. Therefore, it will always open for the petitioners at appropriate stage of the suit to contend that ingredients of Section 65 have not been fulfilled and, therefore, the documents dated 19th August 1985 and 8th September 2000 cannot be read in evidence.

5. With this clarification, the writ petition stands disposed of.

(AMIT BORKAR, J.)