



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2521 OF 2017

M/s Tirupati Capital Enterprises
Through Its Partners S S Bhole And Another
VERSUS
Gopalkrishna Sitraam Maniyar

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Mr. A. P. Bhandari, Advocate for the Petitioners
Mr. A. M. Gholap, Advocate for Respondents

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CORAM : R.M. JOSHI, J
DATE : JUNE 20, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. A short issue is involved in this Petition as to whether learned trial Court was justified in refusing application for leading secondary evidence filed by the Plaintiff to rely upon the photocopy of the partnership deed dated 01.01.1987.

3. In order to decide the present Petition certain relevant facts are required to be taken into consideration. Petitioner is Plaintiff and filed suit for specific performance of contract against Defendants. Defendants in the written statement

specifically pleaded that the partnership firm with whom the Defendants had agreement was a partnership firm which came into existence under partnership deed dated 01.01.1987 and not a partnership deed sought to be relied by the Plaintiff. Plaintiff filed application Exh. 63 contending that the original partnership deed dated 01.01.1987 was filed before the Income Tax Department and Plaintiff is having photocopy thereof. It is claimed that the person who has filed the said original partnership deed before the Income Tax Department is deceased. Except for this, no other evidence is lead in secondary evidence.

4. In order to succeed in seeking permission to lead secondary evidence, it is incumbent on the part of any party to satisfy the essential conditions as contemplated by Section 65 of the Indian Evidence Act. Such party is required to prove that the original document is destroyed or not traceable. In the instant case, when Plaintiff comes with a specific case that the original document is with Income Tax Department unless evidence is lead that the original document was given to the Income Tax Department and it is lost or

destruicted at their end, Plaintiff would not be in position to seek leave to secondary evidence in respect of such document. Learned trial Court has rightly observed in the impugned order about non-compliance of essential requirements to lead secondary evidence at this stage.

5. Petition, therefore, sans merit and hence, dismissed.

6. Learned Counsel for the Petitioner seeks leave to adopt proper procedure as provided by law to prove the document.

7. Leave granted.

(R. M. JOSHI, J.)

Malani