



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12209 OF 2024

Harsh Malhotra.

...Petitioner.

Versus

Vinodkumar Dhanuka and Others.

...Respondents.

Mr. Piyush Raheja and Ms. Dhanashree Gaikawaiwari i/b Bilawala & Co., for the Petitioner.

*Mr. Vipul Shukla i/b Jayesh Vyas for the Respondent No. 3 and 5.
Respondent No.1 present in-person.*

Coram : Sharmila U. Deshmukh, J.

Date : October 24, 2024.

P. C. :

1. Heard.
2. By this petition, the challenge is to the order dated 29th July 2024 passed by the Co-operative Court by which the secondary evidence sought to be led in respect of the documents at Serial Nos.3 to 6, 8 and 9 was rejected for the reasons that no foundation for leading secondary evidence has been laid in the Affidavit of evidence and no application is filed by the Petitioner for leading secondary evidence.
3. As far as the filing of separate application for leading secondary evidence is concerned, learned Single Judge of this Court in

Parasanbai v. Sunanda¹ has held that no application shall be necessitated for the purpose of leading secondary evidence.

4. As far as rejection on the basis of absence of necessary foundation for leading secondary evidence is concerned, perusal of the affidavit of evidence of Petitioner would indicate that the deposition in the Affidavit of evidence in lieu of examination in chief does not lay any foundation for leading secondary evidence as per Section 65 and Section 66 of the Indian Evidence Act, 1872. At the same time, it needs to be considered that the documents on which the reliance is sought to be placed are the photocopies of documents, the original whereof are in possession of the Respondent No.2-Society and notice under Section 66 of the Indian Evidence Act, 1872 is stated to have been given to the Respondent No.2-Society by the Petitioner.

5. Considering the absence of necessary foundation for leading secondary evidence, in order to secure the ends of justice, the impugned order dated 29th July 2024 can be quashed and set aside and opportunity can be given to the Petitioner to file an additional affidavit of evidence laying down necessary foundation for leading secondary evidence in respect of the documents at Serial Nos. 3 to 6, 8 and 9.

6. Respondent No.1-Mr. Dhanuka who appears in-person would only object to the stay granted by this Court and does not oppose the

1 2018(1) Mh.L.J. 788.

filing of additional affidavit of evidence by the Petitioner.

7. In the light of above, impugned order dated 29th July 2024 is hereby quashed and set aside. Liberty to the Petitioners to file an appropriate additional affidavit of evidence for leading secondary evidence in respect of the documents stated above. The said affidavit of evidence to be considered by the Co-operative Court on its own merits, uninfluenced by the observations made in the order dated 29th July 2024. It is made clear that all contentions of all the parties are expressly kept open.

8. Writ Petition is allowed in above terms.

[Sharmila U. Deshmukh, J.]