IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14955 OF 2024.

M/s. Yashodeep Construction Company thr.
Its Partner Vijay Jawaharlal Jain ...Petitioner.

Versus

Matruchaya Cooperative Housing Society Ltd.
Thr. Its Chairman Popatlal C. Bagmar ...Respondent.

Mr. S. S. Panchpor a/w. Ms. N. S. Mahadik, Mr. Aashay Rabade for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : 23rd October, 2024.

P. C. :

1. By this petition, the challenge is to the order dated 23rd September 2024 passed by the Appellate Court in Revision filed by Respondent over turning the order of the Trial Court allowing the application filed by the present Petitioner for leading additional evidence on the issue of admission of the Petitioner as member of the Society.

2. Learned counsel appearing for the Petitioner would submit that after the evidence was led Respondent Society filed *pursis* that they do not want to lead any evidence. He submits that subsequently

certain documents as regards treating the Petitioner as member of the Society came into hands of the Petitioner and therefore application was moved for leading additional evidence which was permitted by the Trial Court. Pointing out to the findings of the Appellate Court, he submits that the solitary reason for over turning the findings of the Trial Court is that documents were available for near about 18 years. He further submits that the Division Bench of this Court in the case of ***Shantibai K. Vardhan and Ors. vs. Meera G. Patel and Anr.***[1] has held that by virtue of omission of Rule 17-A of Order 18 of CPC does not result in taking away power of the Court to permit parties to produce additional documents.

3. From the decision which has been produced on record Division Bench of this Court has specifically held that the omission of Rule 17-A of Order 18 of CPC does not divest the Court of the power to permit production of additional documents. As such there is judicial pronouncement supporting the application of the Petitioner for production of additional documents. It also cannot be disputed that *prima facie* as the issue as regards membership of the Petitioner was in dispute, the documents which are stated to pertain to treating of the Petitioner as member of the Society are relevant for effective adjudication of the dispute. The same finding has been arrived at by

1 ***2008 SCC Online Bom 825***

the Trial Court. *Prima facie* it appears that the Appellate Court has taken into consideration the date of documents without noticing that the document was sought to be produced during the dispute and as such the date on which the documents were executed are irrelevant and what was required to be considered was the relevancy of the documents to the subject matter in dispute.

4. This Court is informed that the matter is fixed today for final arguments before the Trial Court. Considering the above, the Trial Court is requested to defer the proceedings by a period of 4 weeks from today.

5. List petition for further consideration on **11th November 2024.**

6. Issue notice to the Respondents returnable on 11th November 2024. In addition to Court notice, Petitioners to serve the Respondents by private notice and file affidavit of service before the next date. pvt.

7. All concerned to act on authenticated copy of this order.

[Sharmila U. Deshmukh, J.]

Signed by: Rajeshwari S. Karve
Designation: PA To Honourable Judge
Date: 23/10/2024 14:34:35