

respondent no.2 in the suit, and there is no written statement filed by respondent no.2. Hence, notice of this petition to respondent no. 2 would not be necessary.

3. In this petition, the order dismissing the petitioners' application to produce original documents and record further evidence is impugned. The petitioners are the original plaintiffs who filed their affidavit of examination-in-chief, and the defendant conducted cross-examination. The defendant no. 1, i.e. Corporation, filed an affidavit of examination-in-chief. Before the cross was to be conducted, the petitioners filed Notice of Motion No. 3476 of 2019 for permission to produce the original documents on behalf of the plaintiff by setting aside the stage of recording evidence of defendant no. 2.

4. Learned counsel for the petitioners submits that it was only when the suit was posted for the cross-examination of defendant no.1, the petitioners and their Advocate realised that the original documents were not produced on record at the time of recording evidence of the plaintiffs. He therefore submits that before conducting the cross-examination of defendant no.1, the notice of motion was filed. He submits

that if the plaintiffs are not permitted to exhibit the original documents and record further evidence, serious prejudice would be caused, as the plaintiffs rely on the original documents sought to be produced. Learned counsel for the petitioners submits that the photocopies of the documents were filed at the time of filing the evidence affidavit.

5. Learned counsel for the corporation submits that after the impugned order was passed, the cross-examination of the defendant's witness was already completed, and evidence of both parties was closed. He therefore submits that if at this stage the plaintiffs are permitted to produce documents and lead further evidence, serious prejudice would be caused to the defendant's case. He therefore submits that in the event the petition is allowed, defendant no.1 be permitted to lead further evidence.

6. I have perused the papers of the petition. The application for producing documents filed by the plaintiffs is supported by an affidavit. The plaintiffs have submitted in the affidavit that it was only after the suit was fixed for recording evidence of defendant no. 1, the plaintiffs and their Advocate

realised that the original documents were not filed along with the evidence. There is no dispute that the documents sought to be produced are pleaded in the plaint. There is also no dispute that the photocopies of the documents were produced along with the evidence affidavit. In such circumstances, if the plaintiffs are not permitted to produce original documents and lead evidence, serious prejudice would be caused to the plaintiffs. Immediately after realising that the original documents were inadvertently not produced and exhibited, the plaintiffs have taken steps to file the application. In such circumstances, I see no reason why the plaintiffs' evidence should be forfeited by depriving the plaintiffs of producing original documents. If the documents are not produced at this stage, the same would also affect the proper adjudication of the real dispute in the suit.

7. Hence, in view of the aforesaid facts and circumstances, this is a fit case to exercise the powers under Article 227 of the Constitution of India to interfere with the impugned order.

8. The petition is therefore allowed by passing the following order :

- (i) The impugned order dated 8th November 2019 passed by the City Civil Court, Mumbai in Notice of Motion No. 3476 of 2019 in L.C. Suit No. 1658 of 2009 is quashed and set aside.
- (ii) Notice of Motion No. 3746 of 2019 is allowed.
- (iii) The petitioners (plaintiffs) are permitted to recall their witness and file original documents as per the list annexed to the notice of motion. The plaintiffs are permitted to lead further evidence.
- (v) Respondent no. 1 is at liberty to cross-examine the plaintiffs, recall its witness and lead further evidence.
- (vi) The order closing the evidence of both parties is recalled, and both parties are permitted to lead further evidence.
- (vii) The rival contentions of the parties on the merits of the suit are kept open.
- (viii) Writ Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]