

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

WRIT PETITION NO.16230 OF 2024

Sulochana Walimbe
since deceased through legal heirs

....Petitioners

V/S

Prathamik Shikshak Samithi Madhukunj
Co-operative Society Ltd. & Ors.

....Respondents

Mr. Shailendra S. Kanetkar *for the Petitioners.*
Mr. Pankaj J. Das *for Respondent No.1-Society.*

CORAM: SANDEEP V. MARNE, J.
DATE : 13 JANUARY 2025.

P.C.:

1. The Petition is filed challenging order dated 18 July 2024 passed by learned Judge, Co-operative Court No.2, Pune allowing application at Exhibit-224 filed by the Respondent No.1-Society for permitting it to lead additional evidence of the witness Mr. Umesh Vinayak Pandharkar.

2. I have heard Mr. Kanetkar, the learned counsel appearing for Petitioners and Mr. Das, the learned counsel appearing for Respondent No.1-Society.

3. After having heard the learned counsel appearing for parties, it is seen that the Respondent No.1-Society initially examined its Secretary, Mr. Rambhau Genuji Thigale and sought to produce several documents, list whereof is at Exhibit-18. It appears that most of the said documents comprised of photocopies and the Respondent No.1-Society had shown willingness to conduct verification process by showing originals of the said documents to the Court Clerk. It appears that an application to that effect at Exhibit-122 was filed and the request made by the Respondent-Society for verification of photocopies with original documents was in fact allowed by the Co-operative Court by order dated 27 July 2012. Perusal of evidence of DW-1 Mr. Thigale would indicate that he has in fact lead evidence about the documents sought to be produced in the list at Exh-18. It however appears that the Co-operative Court did not mark the said documents in evidence.

4. In the meantime, the proceedings got derailed on account of amendment effected to the dispute application by the Petitioners for adding claim for damages. Once the proceedings were brought back on the track Respondent No.1-Society filed application for marking of its documents as exhibits. The said application was however rejected by the Co-operative Court by order dated 11 March 2024 on the ground that DW-1 Mr. Thigale was no longer available for cross-examination by the Petitioners on the said documents. It is in these circumstances

that the Respondent No.1-Society was advised to lead additional evidence of the witness Mr. Umesh Vinayak Pandharkar. The Co-operative Court has allowed filing of additional evidence of Mr. Umesh Vinayak Pandharkar so as to give an opportunity to the Petitioners to cross-examine the said witness with reference to the documents now sought to be proved. I do not see any error on the part of the Co-operative Court in permitting Respondent No.1-Society to lead evidence of available witness to fill in the lacuna of non-marking of documents produced by it as exhibits.

5. At this stage Mr. Kanetkar would complain that Mr. Pandharkar has sought to rely upon and has produced some of the additional documents which did not form part of the list at Exhibit-18. Mr. Das, on taking instructions makes a statement that the Respondent No.1-Society shall seek exhibition of only documents produced at list at Exhibit-18 and that it has no objection if the additional documents are discarded. Accordingly it is directed that the evidence of Mr. Pandharkar would be considered only for the purpose of proving and marking in evidence documents produced alongwith list at Exhibit-18 and any additional documents sought to be filed by him shall have to be necessarily discarded. This in my view would adequately protect the interest of the Petitioners who would infact get an opportunity to cross-examine the witness of Respondent No.1-Society with reference to documents which are now sought to be proved. I am therefore, not inclined to set aside the order passed

by the Co-operative Court. Subject to the clarification issued above, the Writ Petition is **disposed of**.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
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