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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10642 OF 2025
WITH
INTERIM APPLICATION NO. 9902 OF 2025
WITH
INTERIM APPLICATION NO. 10351 OF 2025**

Nainaben Pranjivan Mehta and Anr ... Petitioners/Applicants

vs.

Riche Investment Consultants and Anr ... Respondents

Mr. Vinit J. Mehta for Petitioners

Mr. Shilesh P. Dalal for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 8th AUGUST 2025

ORDER:

1. This petition is filed to challenge the order dated 13th February 2025 passed by the City Civil Court dismissing the Notice of Motion No. 3776 of 2024. This notice of motion was filed to review the order dated 8th July 2024. By the order dated 8th July 2024, certain documents are exhibited. The order dated 8th July 2024, as recorded in roznama reads as under:

"05 **Coram: H.H.J. SHRI SANGRAM S. SHINDE – (C.R. NO. 81)**

08/07/2024 *Both parties and their advocate are absent.*

BSUIT *Keep back.*

8114/98 *Perused documents filed by the plaintiff vide list Exh-9 and 14. On perusing document at Sr. No.1 filed vide list Exh-9 is a photocopy. Though, plaintiff has stated he has called upon defendant No.1 to produce the original, no such letter or application is filed on record. Documents at Sr. No. 2 and 3 filed vide list Exh-9 are copies of affidavit in reply dated 21.01.1997 and affidavit in sur-rejoinder dated 05.03.1997. These documents are part of record and parties can rely on said documents. Further, if plaintiff wants to get the said documents exhibit, certified copies of the said documents needs to be filed on record. So far as, document at Sr. No. 4 filed vide list Exh-9, it appears that plaintiff has laid foundation to lead secondary evidence. Therefore, document No.4 can be marked as Exhibit. document at Sr. No.1 filed vide list Exh-14 is a photocopy and there is nothing on record to show that how said copy came in his possession. So far as, document at Sr. No. 2 filed vide list Exh-14, it appears that plaintiff has laid foundation to lead secondary evidence. Hence, it can be marked as Exhibit.*

Exh- *Exh-17colly)91 Copies of transfer deeds.(Sr No. 4 of list Exh-9)*
17(colly) *Exh-18 Letter dated 11.01.1997(Sr. No.2 of list Exh-14)*
Exh-18 *Matter is adj to 31.07.2024 for further evidence.*

Judge"

2. Learned counsel for the petitioner submits that the

photocopies of the documents produced alongwith the list at Exhibit-14 and list at Exhibit-9 are exhibited and admitted in evidence. He submits that when these lists of documents were filed, the petitioner had filed a say dated 30th January 2018, objecting to admitting these documents in evidence as the same are not the original documents. He submits that despite this objection, the documents were exhibited admitting in evidence on 8th July 2024. He therefore submits that the petitioner filed Notice of Motion No. 3776 of 2024. He raised an objection for admitting the photocopies in evidence.

3. Learned counsel for the petitioner further submits that order dated 8th July 2024, without recording any reason permitted the documents to be exhibited, as secondary evidence. He submits that so far as document at Serial No. 4 of list at Exhibit-9 is concerned, whether the photocopies are the transfer deeds alleged is seriously disputed by the defendant. He further points out that the letter dated 11th January 1997 is also disputed and hence, it could not have been exhibited by way of secondary evidence, without examining the objections raised by the petitioner.

4. Learned counsel for the petitioner further points out that if the documents are required to be exhibited as secondary evidence, the plaintiff is required to satisfy the conditions as contemplated under

Section 65 read with Section 63 of the Indian Evidence Act. He submits that none of the conditions are satisfied; hence, the documents cannot be exhibited as secondary evidence.

5. Learned counsel for the plaintiff supports the impugned order. He submits that if the pleadings and the evidence are seen, the plaintiff has laid the foundation to lead secondary evidence, as according to the plaintiff, the documents are not in the custody of the plaintiff. He further submits that Notice of Motion No. 3776 of 2024 is filed for review of the order which is already reviewed. Hence, the notice of motion seeking review itself was not maintainable. To support his submissions, learned counsel for the plaintiff relies upon order dated 22nd April 2024. He therefore submits that on 8th July 2024, the documents were exhibited pursuant to the order passed on 22nd April 2024. He therefore submits that the learned judge has rightly dismissed the notice of motion.

6. I have perused the papers of the petition. By order dated 22nd April 2024, the following order was passed:

"03 **CORAM-H.H.J. SHRI SANGRAM S. SHINDE-(C.R. NO. 81)**
22/04/2024 CA of Defendant No. 1 is present.
SU 8114/98 Kept back.

later on 1.50 pm

Adv. Vinit J Mehta for defendant is present.

Later on 4.00 pm

Heard both parties on documents filed by the plaintiff wide list Exh-9 and 14. So far as documents filed wide list Exh-9 are photocopies and so far as documents filed wide list Exh-14 are also photocopies and not leaded in the plaint. Therefore, said documents can not marked and exhibit.

Matter is adj to 10/05/2024 for cross examination of PW-1

Judge”

7. A perusal of the order indicates that after hearing the parties on the documents filed by the plaintiff alongwith the list at Exhibit – 9 and 14, the documents filed with list at Exhibit 9 are the photocopies and the documents filed with list at Exhibit 14 were not exhibited as they were photocopies. Learned counsel for the petitioner therefore makes a grievance that without recalling the order dated 22nd April 2024, the learned judge could not have passed order on 8th July 2024 exhibiting the photocopies as secondary evidence. He therefore rightly submits that even in the impugned order, learned judge has not properly appreciated the order dated 22nd April 2024. He further submits that the reasons recorded in the impugned order in paragraph no. 9 shows that the learned judge has mainly rejected

the notice of motion on the ground that it is time barred. However, if the contents of order dated 22nd April 2024 and the contents of order dated 8th July 2024 are seen, it appears that after holding that the documents cannot be marked and exhibited, learned judge has on 8th July 2024, exhibited the documents and admitted them as secondary evidence. However, order dated 8th July 2024, does not reflect that the objection raised by the petitioner by filing a written say dated 30th January 2018 was taken into consideration.

8. Simply stating that the plaintiff has laid the foundation to lead secondary evidence would not amount to a valid reason for exhibiting the documents as secondary evidence. The procedure as contemplated under Section 65 read with Section 63 of the Indian Evidence Act, is required to be followed before exhibiting the documents as secondary evidence. In view of the objections raised on behalf of the petitioner and the order dated 8th July 2024, the impugned order passed without recording any reason would not be sustainable. This petition deserves to be allowed by remitting the matter to the trial court for deciding the objections raised by the petitioner for exhibiting the documents as secondary evidence.

9. Hence, this petition is partly allowed by passing the following order:

I) The impugned order dated 13th February 2025, passed in Notice of Motion No. 3776 of 2024 in Suit No. 8114 of 1998 is quashed and set aside.

II) The order dated 8th July 2024, passed in Suit No. 8114 of 1998 is quashed and set aside.

III) The concerned Judge of the City Civil Court shall decide the plaintiff's prayer for exhibiting documents at serial no. 4 of list at Exhibit-9 and serial no. 9 of list at Exhibit-14 by secondary evidence, after considering the objections raised on behalf of the defendant.

10. All rival contentions of the parties on the admissibility of the documents at serial no. 4 of list at Exhibit-9 and at serial no. 9 of list at Exhibit-14 is kept open to be decided at the time of deciding the plaintiff's prayer for exhibiting those documents as secondary evidence.

11. Writ Petition is partly allowed in the aforesaid terms.

12. In view of disposal of the writ petition, the pending applications are disposed of as infructuous.

(GAURI GODSE, J.)