

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5258 OF 2025

Maish Products & Ors.

..Petitioners

Versus

M/s Kanan Knitwear & Ors.

...Respondents

Mr. Tarun Kumar Sinha a/w Nirmala Bharati, Mr. Ashish
Karankal, for the Petitioners.

Mr. Harish Pawar a/w Mr. Akash P Shah, Ms. Sonia Neralaly,
for the Respondents.

CORAM: N. J. JAMADAR, J.

DATE : 10th MARCH 2026

Oral Order:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 01st March, 2025 whereby the learned Civil Judge declined to permit the defendant to produce the transcript of the purported audio recording of the conversation between the parties in the meeting held on 17th December, 2010 through the evidence of defendant/Witness No. 2.
3. Mr. Sinha, the learned Counsel for the petitioners, submitted that, the learned Civil Judge took a hypertechnical view of the matter. The purported conversation is necessary for determining the real question in controversy between the parties, especially on the aspect as to whether the MoU was terminated. It was submitted that, the procedure is handmaid of

justice and the fact that the said transcript of the conversation was not produced alongwith the written statement could not have been arrayed as a ground to preclude the defendants from leading relevant evidence.

4. Reliance was sought to be placed on the judgment of the Supreme Court in the case of *Sugandhi (Dead) by LR's & Anr. Vs. P. Rajkumar represented by his power agent Imam Oli*¹, and the judgments of this Court in the cases of *Ramnath Nandalal Dhut & Co. & Anr. Vs. B. R. Shroti & Ors.*², and *J. M. Constructions Vs. Shamrock Impex Pvt. Ltd.*³.

5. This Court has carefully perused the impugned order. First and foremost, it is imperative to note that, no foundation in the pleadings was laid by the defendants with regard to the said transcript of the conversation sought to be produced. In the written statement as well as the additional written statement, there is no reference to the fact that, a meeting was held on 17th December, 2010 between the parties and the conversation in the said meeting was audio recorded and the defendants were in possession of the said audio recording. Secondly, the pendrive containing the audio recording of the alleged conversation and

1 (2020) 10 SCC 706

2 1979 SCC OnLine Bom 221

3 2020 (1) Mh.L.J. 684

transcript of the conversation were not produced along with the written statement.

6. In view of the provisions contained in Rule 1A of Order VIII of the Code of Civil Procedure, 1908, it is incumbent upon the defendant to enter the document in a list and produce the same in Court alongwith the written statement. Sub-Rule (1) of Rule 1A of Order VIII mandates the defendant to produce the document in his possession and file the same along with his written statement. Sub Rule (3) provides that, a document which is not produced at the time of filing of the written statement shall not be received in evidence except with the leave of the Court. Rule 1(1) of Order XIII of the Code mandates the parties to produce their original documents before the settlement of issues.

7. It is true the procedure is handmaid of justice. However, where no foundation is laid in the pleading and no explanation is offered as to why the documents were not produced at an earlier point in time, a party cannot be permitted to produce the documents as a matter of course.

8. In the case at hand, the material on record indicates that, the defendant had not made adequate pleadings in the written statement, neither those documents were produced alongwith

written statement nor the plaintiffs witness(es) were confronted with the purported conversation to which the PW-1 was allegedly a party.

9. In this view of the matter, the decision in the case of *Sugandhi (Dead) Vs. P. Rajkumar (supra)* does not govern the facts of the case at hand. The learned Civil Judge has correctly exercised the discretion not to permit the defendant to adduce the evidence of the purported audio recording of the conversation between the parties. Resultantly, in exercise of the supervisory jurisdiction this Court does not find any legal infirmity in the impugned order.

10. The Writ Petition stands dismissed.

[N. J. JAMADAR, J.]