

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1165 OF 2026

Ramnarayan Sons Private Ltd ... Petitioner

V/s.

The Board of Mumbai Port Authority & Anr. ... Respondents

Mr. Huzefa Nasikwala a/w Sujit Mashal, Advocate for the Petitioner.

Mr. Mandar Bangale i/b Bangale and Associates, Advocate for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATED : 25th FEBRUARY 2026

P.C.:

1. Heard Mr. Nasikwala, learned Counsel appearing for the Petitioner and Mr. Bangale, learned Counsel appearing for Respondent No.1.

2. At the outset, Mr. Nasikwala, learned Counsel for the Petitioner seeks leave to amend the prayer clauses. Accordingly, leave as sought is granted. Amendment be carried out forthwith. Reverification is dispensed with.

3. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 24th January 2024 passed by the learned Judge, Small Causes Court, Mumbai, only relating to exhibiting two documents as per

the following particulars:

- i. Letter issued by the Assistant Estate Manager of BPT dated 16th January 1980 (Exhibit-45).
- ii. Photocopy of Advocate's letter dated 13th September 1982 (Exhibit-46).

As also, in the Writ Petition, the challenge is also to the order dated 13th January 2026 passed by learned Judge, Small Causes Court, Mumbai below Exhibit-80 in L.E. & C. No.103/123 of 1983. The said Application bearing Exhibit-80 has been filed seeking recall of order dated 24th January 2024.

4. At the outset, it is required to be noted that, it is the contention of Mr. Bangale, learned Counsel for Respondent No.1 that the said application bearing Exhibit-80 seeking recall of order dated 24th January 2024 passed by learned Judge, Small Causes Court, Mumbai below Exhibit-80 in L.E. & C. No.103/123 of 1983 is not maintainable. To substantiate said contention, Mr. Bangale, learned Counsel has relied on the decision of the Supreme Court in the case of ***Budhia Swain v. Gopinath Deb***¹. However, the said aspect is not much relevant as in the Writ Petition challenge is also to the order dated 24th January 2024 passed by the learned Judge of the Small Causes Court, Mumbai.

¹ (1999) 4 SCC 396

5. Before considering the challenge to the said order dated 24th January 2024, it is required to be noted that the challenge is only regarding exhibiting documents as Exhibit-45 and Exhibit-46 and, therefore, relevant paragraphs are Paragraph Nos.3 and 4, which read as under:-

“3. Document at Sr. no.3 is Office Copy of Letter issued by Asst. Estate Manager of BPT dated 16/01/1980. The document is referred by the witness in Para no.8 of his evidence affidavit. **Document is Office Copy of original Termination Notice.** Document is more than 30 years old. It is produced from proper custody. It carries presumptive value under Section 90 of Indian Evidence Act. Hence, it shall be marked as **Exhibit-45.**

4. Document at Sr. no.4 is **xerox Copy of Advocate's Letter dated 13/09/1982. It is not office copy.** The document is referred by the witness in Para no.8 of his evidence affidavit. **Foundation is laid in evidence for leading secondary evidence by contending that original is not traceable.** Witness has identified the signature of his Id. Advocate Mr. Nirmal on the said notice and stated contents to be true and correct. Considering this aspect, the photocopy of letter shall be marked as **Exhibit-45.**”

(Emphasis added)

6. It is the submission of Mr. Nasikwala, learned Counsel for the Petitioner that Paragraph No.3 of the impugned order dated 24th January, 2024 is totally illegal and perverse as the same is contradictory to Paragraph No.8 of the Evidence Affidavit concerning said document dated 16th January 1980. As far as Paragraph No.4 is concerned, he

relies on Paragraph Nos.71 and 76 of the Full Bench Judgment of this Court in the case of *Hemendra Rasiklal Ghia v. Subodh Mody*². He therefore submits that Paragraph Nos.3 and 4 of the impugned order dated 24th January 2024 be quashed and set aside and the learned Trial Court be directed to reconsider exhibiting the said documents dated 16th January 1980 (Exhibited as Exhibit-45) and document dated 13th September 1982 (Exhibited as Exhibit-46).

7. On the other hand, Mr. Bangale, learned Counsel for Respondent No.1 supports the impugned order. He submits that although the original office copy of the letter dated 16th January 1980 has been produced on record which has been marked at Exhibit-45, however it has been incorrectly mentioned in the Evidence Affidavit in Paragraph No.8 that the original of the said office copy is not traceable. He submits that as far as Exhibit-46 is concerned, the same is correctly marked, therefore no interference in the impugned order is warranted.

8. The Paragraph No.3 of order dated 24th January 2024 is already reproduced herein above. The said Paragraph No.3 clearly records that the office copy of original termination notice dated 16th January 1980 is produced and, therefore, the Court has observed that said document is more than 30 year old and same has been produced from proper custody and, therefore, same carries presumptive value under Section

2 2008 (6) Mh.L.J 886

90 of the *Indian Evidence Act, 1872* and, therefore, it has been marked as Exhibit-45. However, Paragraph No.8 of the Evidence Affidavit dated 20th December 2023 of witness - Harshali Vasudeao Parab, specifically mentions that office copy of the said letter dated 24th January 2024 is not traceable and inspite of due search in all files and records, the same is not traced. Hence, the photocopy which was mechanically made from the said original office copy, is relied upon and produced. The relevant portion of said Paragraph No.8 of Evidence Affidavit is reproduced herein below:-

“8. I say that the Plaintiffs had by their Assistant Estate Manager’s Notice No.EM/U-3/G-L-173/17813 dated 16th January 1980 which has been duly served upon the Defendant No.1 terminated the tenancy of the Defendant No.1 in respect of the suit premises. I say that without prejudice to the said Notice dated 16th January 1980 the Plaintiffs had by their Advocate’s Notice dated 13th September 1982 terminated the tenancy of the Defendant No.1 in respect of the suit premises and the said Notice has been duly served upon the Defendant No.1 by Regd. Post and also by service all the office address of the Defendant No.1 through Plaintiffs representative. I rely upon office copy of the said letter dated 16.01.1980 with proof of service, which is listed as Item No.3 Colly in the list of documents. I say that the said letter is duly signed by Mr. S. K. Wadhanwala I know and identify the signature from the records, the contents thereof are true and correct, I say that the original of the said letter is sent to the Defendant No.1, but the Office Copy is not traceable, inspite of due search in all files and records. Hence, the Xerox copy which was mechanically made

from the said original office copy, is relied upon and produced. I pray the said document may be taken on record as secondary evidence and marked as Exhibit. I rely upon office copy of the Advocates letter dated 13.09.1982 with proof of service, which is listed as Item No.4 Colly in the list of documents. I say that the said copy letter dated 13.09.1982 which is duly signed by Mr. T.L.S Nirmal, Advocate I know and identify the signature from the records, the contents thereof are true and correct, I say that the original of the said letter is sent to the Defendant No.1, but the Office Copy is not traceable, inspite of due search in all files and records. Hence, the Xerox copy which was mechanically made from the said original office copy, is relied upon and produced, I pray the said document may be taken on record as secondary evidence and marked as Exhibit.”

(Emphasis added)

9. Thus, it is clear that Paragraph No.3 of the impugned order dated 24th January 2024 is totally contradictory to the relevant portion of Paragraph No.8 of Evidence Affidavit.

10. Thus, in view of the above position, Paragraph No.3 of the said order dated 24th January 2024 is required to be set aside by directing the learned Trial Court to decide the evidentiary value of document at Serial No.3 i.e letter issued by Assistant Estate Manager of BPT dated 16th January 1980 afresh.

11. As far as contention raised regarding Paragraph No.4 of the impugned order dated 24th January 2024, it is required to note the relevant part of the Full Bench decision of this Court in the case of

Hemendra Rasiklal Ghia (supra). In Paragraph Nos.71 and 76 of the said decision, it has been observed as under:-

“71. The admissibility of the document in evidence may be broadly classified into three classes-(i) that objection to the document which is sought to be proved is itself insufficiently stamped and the objection relates to deficiency of stamp duty of the document; (ii) where the objection does not dispute admissibility of document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient; and (iii) the objection that the document which is sought to be proved is ab initio inadmissible in evidence.

“76. In the third case merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded. It is available to be raised even at later stage or even in appeal or revision. There is no question of inadmissible documents being read into evidence merely on account of such documents being given exhibit numbers in affidavit filed by in examination-in-chief or while recording oral evidence. For example in case of unregistered sale-deed or gift-deed or lease-deed requiring registration, no evidence of the terms thereof can be given. On the ground of public policy, evidence derived from unpublished official records of the State cannot be given except with the permission of the head of the department concerned as laid down under section 123 of the Evidence Act. Such a document, therefore, can be tentatively exhibited and the decision thereon can be postponed till the suit reaches the stage of judgment. However such objection has also to be decided before the judgment is delivered. The objection to the admissibility of such evidence can always be taken at any stage of the suit.”

(Emphasis added)

12. Thus, it is clear that the document which has been marked at Exhibit-46 has been tentatively marked and decision thereon has to be taken with respect to the admissibility of such evidence at later stage

before the delivery of the Judgment.

13. Thus, the Writ Petition is disposed of by passing the following order:-

(A) Paragraph No.3 of order dated 24th January 2024 is quashed and set aside and the said aspect of marking the document dated 16th January 1980 is remanded back to the learned Trial Court to be decided afresh.

(B) As far as Paragraph No.4 of the impugned order 24th January 2024 by which document is marked as Exhibit-46, the challenge to the same is rejected subject to the clarification that the learned Trial Court will take decision regarding said Exhibit in accordance with the law laid down by the Full Bench in the case of *Hemendra Rasiklal Ghia* (supra).

14. Accordingly, the Writ Petition is disposed of in above terms, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]