

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

WRIT PETITION NO. 2894 OF 2026

Sunil N. Shah (H.U.F.)

...Petitioner

Versus

The Freyssinet Prestressed Concrete Co.
Ltd.

...Respondent

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
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Mr. Mangal Bhandari, i/b Pranjali Bhandari, for the Petitioner.
Mr. P. H. Chande, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 5th MARCH, 2026

Order:-

1. The challenge in this petition is to an order dated 13th November, 2026 passed by the learned Judge, City Civil Court, in Summary Suit No.4704/2011, whereby the learned Judge declined to mark the office copies of the RA Bills, the photostat copies of the RA Bills received from the defendant with certification, and the copies of the Ledger Account in evidence, on the ground that the plaintiff had not laid the necessary foundation to permit the plaintiff to lead the secondary evidence.

2. The petitioner – plaintiff has instituted a suit to recover the amount of Rs.7,84,847/- alongwith interest at the rate of

12% p.a. on the principal amount of Rs.4,91,515/- from the date of the suit till payment, on the basis of the RA Bills raised by the petitioner for the work executed by the plaintiff pursuant to the work orders issued by the defendant.

3. The plaintiff gave a notice to produce the documents, which were stated to be in the custody of the defendant on 3rd April, 2025. The defendant gave a reply to the said notice and contended that as of then (July, 2025) the defendant did not have the originals of the documents mentioned in the said letter. The plaintiff then professed to lead secondary evidence of those documents. By the impugned order, the learned Judge declined to admit in evidence and accept the documents, office copies of the RA Bills (Sr. Nos.4 to 6), photostat copies of the RA Bills received from the defendant with certification (Sr. Nos.7 to 9), and copies of the ledger maintained in the books of account of the defendant (Exhibits 22 and 27).

4. Mr. Bhandari, the learned Counsel for the petitioner, submitted that the learned Judge, City Civil Court, was not justified in declining to admit those documents in evidence despite the plaintiff having made out a case to lead the secondary evidence. A notice to produce the documents was given to the defendant. A guarded response was given by the

defendant that as of then, the originals were not in the custody of the defendant. Emphasis was laid on the fact that in the written statement, the defendant has not denied the existence of the RA Bills. What was denied were the comments made by the plaintiff in regard to the certified bills forwarded by the defendant to the plaintiff.

5. Mr. Chande, the learned Counsel for the respondent, supported the impugned order. It was submitted that the learned Judge, City Civil Court, has recorded adequate reasons for not marking the office/photostat copies of the documents in evidence. As the order passed by the Judge is in consonance with law, no interference in the exercise of supervisory writ jurisdiction is warranted, submitted Mr. Chande.

6. In regard to the copies of RA Bills No.1, 2 and 3 dated 25th November, 2005, 21st December, 2005 and 27th January, 2006, respectively, which do not bear the signature of any person on behalf of the plaintiff or an acknowledgment of receipt of the original Bills by or on behalf of the Defendant, no fault can be found with the impugned order, as there is no material to indicate that the unsigned purported office copies satisfy the description of secondary evidence under Section 63(2) and (3) of the Indian Evidence Act, 1872.

7. In regard to the copies of the RA Bills Nos.1, 2 and 3 (Sr. Nos.7 to 9) purportedly received from the defendant with certification, however, the refusal by the learned Judge, City Civil Court, to admit and mark those documents in evidence, warrants consideration. A brief reference to the pleadings would be necessary. In paragraph 11(E) of the plaint, the plaintiff has asserted that sometime around September, 2006, the plaintiff received copies of the certified RA Bills alongwith copy of their Ledger Account in the books of defendant company. Thereafter the plaintiff on 23rd September, 2006 addressed a letter to the defendant placing on record his comments regarding the certified bills. A copy of the letter dated 23rd September, 2006, which has been marked in evidence, lends credence to the said claim of the plaintiff. The said letter records that the plaintiff was in receipt of the certified copies of RA Bills No.1, 2 and 3 alongwith copy of Ledger Account of Disha Enterprises for the period 1st April, 2005 to 30th June, 2006 in the books of account of the defendant. By the said letter, the plaintiff offered comments in regard to the certification of those RA Bills by the defendant.

8. It would be contextually relevant to note that, in response to the said assertion, in paragraph 20 of the written statement,

the defendant denied the correctness of the comments regarding the certified bills made by the plaintiff in the letter dated 23rd September, 2026. The defendant also denied the correctness of the contents of the letter dated 23rd September 2006.

9. What is conspicuous by its absence is the specific denial of the fact that the plaintiff had received copies of the certified RA Bills alongwith copy of the plaintiff's Ledger Account in the books of the defendant company. What was denied was the correctness of the comments in regard to those certified bills made on behalf of the plaintiff.

10. In the aforesaid backdrop, it must be noted that Mr. Chande submitted that the fact that the defendant had made the endorsements on the RA Bills Nos.1, 2 and 3 and, thus, certified those RA Bills; the photostat copies of which were tendered at Sr. Nos.7 to 9, was not much in contest.

11. This Court finds that if the averments in the plaint and the contentions in the written statement are read in conjunction with the letter dated 23rd September, 2006 which records the fact of receipt of certified copies of RA Bill Nos.1, 2 and 3, the existence and contents of the photostat copies of RA Bills No.1, 2 and 3 could not have been denied. Since the plaintiff had addressed the notice to the defendant under Section 66 to

produce the original RA Bills, the case appears to be covered by Section 65(a) of the Indian Evidence Act, 1872. Evidently, the defendant did not produce the said original RA Bills and claimed that they were not in the custody of the originals. Thus, the learned Judge, City Civil Court, could not have declined to mark the photostat copies of certified RA Bills (Sr. Nos.7 to 9).

12. In regard to the copies of the ledger in the books of the defendant company, which the plaintiff claimed to have received from the defendant, alongwith copies of certified RA Bill, also, the plaintiff seems to have laid the necessary foundation in the pleadings. As noted above, in paragraph 11(E), the plaintiff categorically asserted that it had received copies of certified RA Bills alongwith copies of the ledger account in the books of the defendant, and there was no specific denial in the written statement thereto.

13. Mr. Chande would urge that, the contents of the ledger account (Sr Nos.22 and 27) cannot be said to have been proved. Therefore, the trial Court was justified in refusing to admit those documents in evidence by way of secondary evidence.

14. It is imperative to note that the learned Judge, City Civil Court, has recorded a finding that the plaintiff has not pleaded as to when and from whom the plaintiff received copy of the

ledger account. Plainly, the said finding cannot be sustained as in paragraph 11(E) of the plaint there is specific pleading as to when and how the plaintiff has received copies of those ledger accounts, and the further action taken by the plaintiff in relation thereto. In fact, there was no denial on the part of the defendant of the receipt of the copies of the ledger account by the plaintiff from the defendant.

15. Since the defendant did not produce the original books of account despite notice, the necessary conditions for permitting the plaintiff to lead the secondary evidence were satisfied. However, the proof of the contents of the copies of the ledger account and the truthfulness thereof would be a matter for adjudication.

16. For the foregoing reasons, the petition deserves to be partly allowed.

17. The impugned order stands modified to the following extent :

- (i) The copies of the certified RA Bills No.1, 2 and 3 (Sr. Nos.7 to 9) be admitted in evidence and marked as exhibits.

- (ii) The copies of the ledger account for the period 1st April, 2005 to 30th June, 2006 (Sr. No.22) and 1st April, 2007 to 13th March, 2009 (Sr. No.27) be admitted in evidence and marked as exhibits, subject to proof of contents and truthfulness thereof.
- (iii) The learned Judge shall pass necessary consequential orders.
- (iv) It is, however, clarified that the aforesaid consideration is confined to marking of the documents only and it may not be understood that this Court has expressed any opinion on the merits of the matter and the learned Judge, City Civil Court, shall not be influenced by any of the observations while finally adjudicating the suit.

[N. J. JAMADAR, J.]