

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 2115 OF 2015

Ratilal Babu Patil
through GPA of Narottum Babu
Patil

... Petitioner

Versus

The State of Maharashtra
& others

... Respondents

.....
Mr. D.M. Pingale, Advocate for petitioner
Mr. D.R. Korde, A.G.P. for respondent Nos. 1 to 3.

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 3rd MARCH, 2015

PER COURT :

1. Grievance of the petitioner is that an application under Order XI rule 14 of the CPC, seeking production of documents has been rejected by the Trial Court vide the impugned order dated 25-09-2014.

2. The petitioner submits that the list of documents set out below Exhibit 39 are indicated to be in the custody of defendant Nos. 1, 2 and 3. It is not the case of the petitioner that these documents have come into the custody of the defendants after the recording of oral and documentary evidence was concluded. It is

not in dispute that the stage in Special Civil Suit No. 34 of 2010 was for the litigating sides to advance final submissions in the matter.

3. Pursuant to the passing of the impugned order dated 25-09-2014, the petitioner preferred an application below Exhibit 57 invoking the jurisdiction of the Court under Section 151 of the CPC. The said application was rejected by the trial Court concluding that Section 151 empowers the Trial Court to pass an order in exceptional circumstances. The petitioner had not made out any such case by which the Talathi or the Deputy Collector deserved to be issued with witness summons.

4. Grievance of the petitioner therefore, is that the documents which were required to be produced by the defendants since they are in their exclusive custody, would not be part of the evidence on account of the impugned order, inasmuch as, the Talathi or the Deputy Collector is not being permitted to be examined despite the District Collector, Nandurbar and the Deputy Collector, Nandurbar being defendant Nos. 2 & 3.

5. The petitioner could have been more diligent at the commencement of recording of oral evidence and could have

taken steps to ensure the production of certain documents which are a part of the revenue record.

6. In my view, when the defendants have not chosen to lead evidence and have not filed their written statement, the trial Court would surely take cognizance of the fact that the contentions of the petitioner have virtually gone unchallenged. The petitioner has also led oral evidence in the matter. The evidence recorded before the Trial Court is bound to be considered by the Trial Court while deciding the suit.

7. In the light of the above and in view of the observations as above, this petition is disposed of.

(**RAVINDRA V. GHUGE, J.**)