

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11035 OF 2014

HARDASMAL TRADING COMPANY AND ANOTHER
VERSUS
SATYANARAYAN MULCHAND PUROHIT AND OTHERS

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Advocate for Petitioners : Shri Sant Kishor C.
Advocate for Respondents 1 to 4 : Shri Chaudhary V.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 12, 2015

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PER COURT :-

1. Heard the learned Advocates for the respective parties.
2. RCS No.788 of 2012 has been filed by the respondents on 21.9.2012. The petitioners moved an application on 9.11.2012 below Exhibit 9 praying for issuance of directions to the plaintiffs to produce certain documents, which have been relied upon in the plaint, but, yet withheld from being produced in the Court. According to the petitioners / defendants, the said documents will have to be supplied to the defendants so as to enable them to file their written statement and meet all contentions of the plaintiffs, which are founded on the said documents.
3. The petitioners submits that since the defendants were under the mandate of filing the written statement in accordance with the provisions of the Code of Civil Procedure ("CPC"), a detailed written statement has been filed on 10.12.2012, below Exhibit 13. Nevertheless, application

Exhibit 9 was pursued by the petitioners and which came to be rejected by order dated 20.9.2014.

4. The impugned order below Exhibit 9 reads as under:-

" Read the application Heard both the sides.

Though, the plaintiff relied on the documents mentioned in the application, if he failed to prove the documents, he will suffer the consequences thereof. Plaintiff has to prove his own case and moreover, W.S., in this matter is filed on record Hence, considering the above facts, prayer in respect of documents is hereby rejected and prayer to file W.S., is not having no substance. Hence this order."

5. The petitioners, therefore, submit that the plaintiffs have shrewdly withheld the documents so as to weaken the written statement of the petitioners / defendants. It is further submitted that after knowing the case of the petitioners in their written statement, the defendants are likely to produce the said documents along with their evidence on the ground that the said documents have been adverted to in the plaint and therefore, their production is justified. This would cause an irreparable harm to the petitioners. Fair play in the Court proceedings mandates that the defendants must know the material based on which the plaintiffs have founded their plaint. It is, therefore, submitted that the impugned order deserves to be quashed and set aside.

6. Shri Choudhary, learned Advocates, appearing on caveat, for the respondents submits that it is the outlook of the plaintiffs whether they would prefer to produce the documents or not. The issues have been cast on 10.10.2014. Issue as regards recasting of issues is pending. In the event, the plaintiffs do not produce the documents, they shall suffer the consequences. However, if the said documents are produced, the petitioners would get the opportunity of confronting the said documents and the CPC equips and protects the interest of every litigant, even in such situations. However, there can be no compulsion imposed on the plaintiffs to produce documents. Therefore, he submits that the petition be dismissed.

7. I find that the trial Court in the impugned order has protected the interest of the petitioners. It is noted that the failure on the part of the plaintiffs to produce the documents referred to in the plaint, would make them liable to suffer consequences of non-production of documents.

8. I do not find that the impugned order could be termed as perverse or erroneous for the reason that in any eventuality, if the plaintiffs spring up a surprise by producing the documents along with the evidence, the petitioners are not rendered remediless. On the ground that the documents have been filed at the time of recording of evidence, will give the petitioners a cause of action. In that view of the matter, the CPC would protect the interest of the petitioner and more so in the light of the observations of the trial Court in the impugned order dated 20.9.2014

passed below Exhibit 9.

9. As such, the impugned order does not call for any interference and this petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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