

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10352 OF 2013

Ratnakar s/o Eknathrao Surale,
Age: 64 years, Occu. Nil,
R/o. Opp. Treedal Apartment,
Naralibaug, Aurangabad
Tahsil and Dist:- Aurangabad

...PETITIONER

VERSUS

Syed Afzaluddin Nehari S/o
Syed Mazharuddin Nehari,
Age: 85 years, Occu. Nil,
R/o. Near Hazrat syed Shah Ali Nehari Dargah,
and Mosque Takla Opp. Nutan Colony,
Tahsil and Dist:- Aurangabad

...RESPONDENT

Mr Prashant D. Suryawanshi, Advocate for petitioner;
Mr A.D. Kasliwal, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 20th January, 2015

ORAL ORDER

By consent of the parties, the writ petition is taken up for final disposal.

2. By the present writ petition under Article 227 of the Constitution of India, the petitioner/original defendant, seeks to challenge the order dated 4th December, 2013, passed by 6th Joint Civil Judge Junior Division, Aurangabad, below Exh.181, In Regular Civil Suit No.69 of 1991, whereby prayer of the defendant to allow production of documents on record, came to be turned down.

3. The petitioner/defendant moved application Exh.181, in Regular Civil Suit No.69 of 1991, during his cross-examination on 19th July, 2013, seeking production of 28 documents. The documents are sought to be produced on record, during his cross-examination, after recording of evidence of the plaintiff was over. The petitioner cited cause that the documents are necessary for proper adjudication of the issue raised before the Court.

4. According to the learned Counsel appearing on behalf of the petitioner, whether those documents are admissible in evidence or not is a subsequent issue, which can be gone into by the Trial Court while considering those documents in evidence.

5. Learned Counsel appearing on behalf of the petitioner has placed reliance on the judgments of this Court in the matter of **Mrs Ivy Muriet Fonseca vs. Mr Porus Adi Doctor**, reported in **2005 (4) Bom. C.R. 342** and **HCL Ltd. vs. Krishna Nanu Naik & sons**, reported in **2005 (5) Bom. C.R. 305**, so as to canvass that the documents can be tendered at any stage during the course of recording of evidence of the defendant even if those documents are not put to the plaintiff. According to him, the admissibility of the documents during the evidence can be gone into and can be further evaluated independently by the Trial Court. He further urged that the

rejection of the application for production of documents during the cross-examination of the defendant has resulted into violation of principles of natural justice. Learned Counsel further urged that for sufficient cause being shown, the documentary evidence can be produced even at the appellate stage, in view of Order XLI, Rule 47 of the Code of Civil Procedure. Learned Counsel submits that few of the documents which are sought to be produced, are already on record of this Court and, in fact, the documents sought to be produced are public documents and no prejudice will be caused to the plaintiff. He further urged that as a matter of fact, those documents, if received in evidence, will be in aid of the Court for taking appropriate decision on the cause which has been brought before the Court.

6. Mr Kasliwal, learned Counsel appearing on behalf of the respondent/plaintiff has invited my attention to the application at Exh.181. He submits that the said issue is governed by the provisions of Order XIII, Rules 1 & 2 of the Code of Civil Procedure. According to him, the petitioner was duty bound in accordance with Rule 2, sub-rule (1) of Order XIII of the C.P.C. to mention the specific reason/cause as to why the documents were not produced at the relevant time. According to him, perusal of the application at record page 50 depicts no reason whatsoever.

7. Learned Counsel appearing on behalf of the respondent further urged that issues in the suit were framed on 14th February, 1996 and the plaintiff has closed his evidence on 13th January, 2011. It is further submitted that the defendant had filed his affidavit of examination-in-chief on 9th September, 2002 and during his cross-examination he had sought adjournments on 24th June, 2013 and 4th July, 2013. It is further urged that for these adjournments the petitioner/defendant has cited his illness as cause, however, he was engaged in procuring those documents. He submits that the very conduct of the petitioner in delaying the trial needs to be considered.

8. Having considered rival contentions of the parties and on perusal of the application Exh.181, it is noticed that the said application reflects no reason what-so-ever for non-compliance of the requirement of Order XIII, Rule 2 (1) of the Code of Civil Procedure. The petitioner has not cited any substantial cause/reason for non-production of those documents at an earlier stage, i.e. along with the written statement as is contemplated under Order VIII of the Code of Civil Procedure.

9. It is also required to be noted that for production of the said documents, at this stage, no appropriate cause is mentioned before the Court.

10. Learned Trial Court, after considering the history of the case as regards filing of the written statement, framing of issues, commencement of recording of the evidence of the plaintiff and completion of the same, the commencement of recording of the evidence of the defendant and cross-examination and adjournments sought by the petitioner herein during his cross-examination and the stage at which the documents were sought to be produced before the Court and having regard to the provisions of Order VIII, Rules 1 and 3 of the C.P.C. has proceeded to pass a detailed order.

11. The reasons cited by the learned Trial Court are germane to the cause. In that view of the matter, no case for interference is made out.

12. Writ Petition being devoid of merit stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

amj