

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.715 OF 2015**

- 1 Mr. Manguesh Rajaram Wagle,
(Orig. plaintiff No.2a.)
- 2 Mrs. Smita Manguesh Wagle,
(Orig. plaintiff No.2b.)
Both major, Both residents of near
'Mahalaximi Temple'
dada Vaidya Road,
Panaji-Goa. Petitioners

V/s

- 1 Mr. Suresh D. Naik,
Major, C/o. 'Hotel Republica',
Opp. Secretariat, Panaji.
- 2 Mr. Abdul Razak (since deceased)
C/o. Hotel Republica, Opposite old
Secretariat, Panaji.
- 2(i) Mrs. Sayeeda Abdul Razak, Major,
widow.
- 2(ii) Mr. Mohammed Anif,
Major, son.
- 2(iii) Miss Amira Abdul Razak,
Major, Daughter.
- 2(iv) Mrs. Farha Abdul Razak,
Major, Daughter.
- 2(v) Mr. Matheen I. Sait,
Major, Son-in-law.

- 2(vi) Mrs. Sadia Abdul Razak,
Major, Daughter.
- 2(vii) Mr. Ajaz Ahmed,
Major, Son-in-law
All residents of 'Mubarak Manzil',
Opposite Electricity Department
quarters,
Aquem, Margao-Goa.
(original Defendants)
- 3 Mrs. Suman Anand Naik Kurade,
(Orig. plaintiff No.2c.)
Major, daughter.
- 4 Dr. Anand G. Naik Kurade,
(Orig. plaintiff No.2d.)
Major, Son-in-law,
Both residents of near Sangam
Sagar-B-168, East Kailash, New
Delhi.
- 5 Mrs. Sharad Suresh Shirwaikar,
(Orig. plaintiff No.2e)
Major, Daughter.
- 6 Mr. Suresh W. Shirwaikar,
(Orig. plaintiff No.2f.)
Major, Sonin-law,
Both residents of Shraddha,
Aquem Alto, Margao-Goa.
- 7 Dr. (Mrs.) Sheela G. Laud,
(Orig. plaintiff No.2g.)
Major, Daughter.
- 8 Dr. Ganan W. Laud,
(Orig. plaintiff No.2h.)
Major, Son-in-law,
both residents of 123,

Shrub Hollow Road,
Hamilton Park, New York 11576,
U.S.A.

- 9 Mrs. Rekha S. Talwadkar,
(Orig. plaintiff No.2i.
Major, Daughter.
- 10 Mr. Satish S. Talwadkar,
(Orig. plaintiff No.2j.)
Major, Son-in-law,
Both r/o. Adhakraishna Building,
1st floor, St. Inez, Panaji.
- 11 Mrs. Alha D. Sardessai,
(Orig. plaintiff No.2k.)
Major, Daughter.
- 12 Mr. Digambar B. Sardessai,
(Orig. plaintiff No.2l.)
Major, Son-in-law,
Both residents of A-101,
Suman Apartments,
Lokhandwala Complex,
Andheri (West), Mumbai-400 053. Respondents

Shri S.D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for the Petitioners.

Mrs. A. Agni, Senior Advocate with Ms. Kalpa Govekar, Advocate for Respondents No.2(i) to 2(vii).

CORAM : C.V. BHADANG, J.

Reserved on : 14th OCTOBER, 2015

Pronounced on 30th OCTOBER, 2015

JUDGMENT :

Rule. Rule made returnable forthwith. The learned Counsel appearing for the respondents waives service. Heard finally by consent

of the parties.

2. By this petition, the petitioners who are original plaintiff nos.2(a) and 2(b) are challenging the order dated 31/08/2015 passed by the learned Civil Judge Junior Division, Panaji, in Regular Civil Suit No.279/2000/D. By the impugned order, application at Exhibit 193 filed by the petitioners to produce additional documents has been rejected.

3. The brief facts necessary for the disposal of the petition may be stated thus:

That the petitioners along with respondent nos.3 to 12 are the co-plaintiffs in Regular Civil Suit No.279/2000/D (old Special Civil Suit No.5/1992/A). The case made out in the plaint is that the plaintiffs are tenants in possession of a portion forming part of building known as “Yasin Manzil” situated at St. Inez, Panaji, which is surveyed under chalta no.126 of PT sheet no.66. It is contended that the original defendant no.2 Shri Abdul Razak (since deceased) in collusion with the respondent no.1 (original defendant no.1) Shri Suresh Naik had obstructed the entry and the user of the said premises which was being used as a garage for parking of vehicles.

4. It was contended on behalf of the defendants in the suit that the possession of the suit premises was surrendered by the original tenant Shri Rajaram Wagle prior to his death in the year 1981. Subsequently, in or about the year 1990, the said premises were given to the defendant no.1 Shri Suresh Naik, who is running a liquor business therein under two licences bearing nos.129/1992 and 63/1992. There was some dispute as to in respect of which premises the application for excise licence was made and the premises in respect of which licences pertain.

5. It appears that the Trial Court framed issues out of which the issue nos.3 & 4 which are relevant for the purpose read as under:

3. Whether the defendant no.1 proves that he was inducted by defendant no.2 in the suit premises?

4. Whether defendant no.2 proves that late Rajaram Wagle as the tenant of the suit premises surrendered the same to him before this death?

6. It appears that the parties led evidence. On behalf of the defendants, (DW1) Ms. Amira Abdul Razak was examined apart from 2 other witnesses including DW3 Durgesh Naik, who was the Excise Inspector. It further appears that the petitioners had closed their leading case, reserving their right to lead evidence in rebuttal on the aforesaid

issue nos.3 & 4, burden in respect of which lay on the defendants. On 1/07/2015, the petitioners filed an application Exhibit 190 praying for a summons being issued to the representative from the office of the Commissioner and Excise to produce the entire files pertaining to the agreement of the two excise licences namely 129/1992 and 63/1992. The Trial Court by an order dated 10/07/2015 rejected the said application. That was challenged by the petitioners before this Court in Writ Petition No.562/2015. This Court rejected the Writ Petition on 23/07/2015 in the following terms:

“4. I have given my thoughtful consideration to the contentions of the learned Senior Counsel appearing for the petitioners. By the impugned order, the learned Judge has in fact noted that the petitioners can produce certified copies of the records of the concerned files. With regard to the contentions of Mr. Lotlikar, learned Senior Counsel appearing for the petitioners, that the records will be relevant to examine whether some new documents were introduced subsequently, I find that this aspect can be ascertained only after the petitioners produce the certified copies of the documents from the concerned files, on which the petitioners rely. In case the Court finds any discrepancy with regard to the documents, and in case such aspect is material to decide the matter in controversy in the suit, it is open to the Court to direct the concerned Authority to produce the files in accordance with law.

5. Subject to the above, I find that no case is made out by the petitioners to entertain the

petition under Article 227 of the Constitution. The petition stands, accordingly, rejected. However, liberty to the petitioners to challenge the impugned order in case any adverse order is passed against the petitioners at the time of final disposal of the suit on merits.”

7. On 1/08/2015, the petitioners filed yet another application Exhibit 193 for leave to produce documents namely the certified copies of the two files in their entirety, which they had obtained from the Excise Department, firstly, in the year 2006 and thereafter in the month of July, 2015. It was contended that the production of the certified copies was necessary to falsify the stand of the respondents/defendants that the excise licences pertain to the demised premises as also to show how the files have been manipulated over the years including introduction of certain documents at the later stage to create an impression that these documents were submitted while making the original application for licence. It was also contended that DW1 during her examination had initially agreed to produce the entire set of papers, but had subsequently avoided to do so. It was contended that the production of the certified copies is necessary in order to enable the Court to ascertain whether or not the two files have been tampered with.

8. The application was opposed by the respondents/defendants, inter alia, contending that the petitioners have already produced certain

documents including the certified copies of in all 16 documents as set out in para 2 of the reply. All the adverse allegations were denied. It was contended that the petitioners had obtained the certified copies of the files pertaining to the two excise licences in the year 2006 and were in possession thereof. The petitioners had full opportunity of cross-examining DW1 and DW3 (the Excise Inspector), on the basis of these documents. It was denied that there was any manipulation inasmuch as the documents pertain to the public office to which the respondents/defendants cannot have any access. It was further contended that the earlier application Exhibit 190 seeking summoning of the entire files has already been rejected and this is yet another attempt to produce the said certified copies without specifying as to how all these documents are material to lead evidence in rebuttal on issue nos.3 & 4. It was contended that this is an attempt to reopen the evidence which is not permissible.

9. The learned Trial Court by the impugned order dated 31/08/2015 has refused to allow the production of the documents, inter alia, on the ground that the documents are not relevant for the rebuttal of the evidence of the respondents/defendants on the issues required to be proved by them, as also to falsify DW1. Feeling aggrieved, the petitioners are before this Court.

10. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioners and Mrs. A. Agni, the learned Senior Counsel appearing for contesting respondent nos.2(i) to 2(vii). The notice to respondent nos.3 to 12 they being the co-plaintiffs was dispensed with.

11. It is submitted by Shri Lotlikar, the learned Senior Counsel for the petitioners that the production of the certified copies of the two files is necessary for deciding the controversy in question. It is submitted that the petitioners had specifically reserved the right to lead evidence in rebuttal on issue nos.3 & 4. Thus the Trial Court ought to have granted permission to produce the documents. It is submitted that this Court by judgment and order dated 23/07/2015 in Writ Petition No.562/2015 had observed that the certified copies would be relevant to examine whether some new documents were introduced subsequently and has further found that this aspect can be ascertained only after the petitioners produce the certified copies of the documents from the concerned files on which the petitioners rely. The learned Senior Counsel has submitted that there is discrepancy between the two sets of documents obtained in the year 2006 and July, 2015. The learned Senior Counsel also made reference to the charges levied for obtaining these copies stating that DW1 was charged more for the copies than the petitioners, who could

obtain the copies by paying a lesser amount, which would show that there is some discrepancy as to the papers in the entire file. He, therefore, submitted that the impugned order needs to be set aside. The learned Senior Counsel also sought to refer to the two sets of documents, particularly, in order to point out about the discrepancy in the plan (Exhibit 81) about the existence of a stamp. The learned Senior Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of *Bipin Shantilal Panchal V/s. State of Gujarat & Anr.* reported in *(2001) 3 SCC 1* and the decision of this Court in the case of *Smt. Chitrakala Fal Dessai V/s. Shri Balu Marathe alias Mane* reported in *2006 (5) ALL MR 438*.

12. On the contrary, it is submitted by Mrs. Agni, the learned Senior Counsel for the respondents no.2(i) to 2(vii) that the production of the documents can be allowed only when they are relevant. It is submitted that even this Court while deciding Writ Petition No.562/2015 had stipulated that the production of the certified copies which are found to be relevant can be allowed. It is submitted that the Trial Court after considering the rival contentions has rightly come to the conclusion that the petitioners have failed to make out a case of the documents being necessary for the purposes of rebuttal. The learned Senior Counsel would also submit that the suit is pending for more than 23 years with an

interim relief operating in favour of the petitioners. It is submitted that this is only an attempt to buy time and under the garb of the production of the documents, the petitioners cannot seek to reopen the trial. The learned Senior Counsel has placed reliance on the decision of the Punjab and Haryana High Court in the case of ***Surjit Singh & Ors. V/s. Jagtar Singh & Ors.*** reported in ***AIR 2007 P H 1***, in order to submit that Order 18 Rule 3 of CPC would not give a right to the plaintiff to lead evidence in rebuttal, on issues in respect of which the onus of proof is on the plaintiff. In other words, it is submitted that the evidence in rebuttal can be given only in respect of the issues, the burden of which lies on the adversary. Reliance is then placed on the decision of the Hon'ble Supreme Court in the case of ***Jai Singh & Ors. V/s. Municipal Corporation of Delhi & anr.*** reported in ***(2010) 9 SCC 385***, which sets out the parameters within which the powers of superintendence under Article 227 of the Constitution of India can be exercised. It is submitted that this Court while acting under Article 227 of the Constitution of India does not sit as an appellate Court so as to reappreciate the entire matter and substitute its own view.

13. I have given my anxious consideration to the rival circumstances and submissions made. A perusal of the issue nos.3 & 4 would clearly show that the burden in respect of these issues lay on the

respondents/defendants. Thus, the petitioners can only seek permission to lead evidence in rebuttal in so far as these issues are concerned. It is further undisputed that the petitioners had obtained two sets of documents in respect of the two licences one each in the year 2006 and thereafter in July, 2015. It is further undisputed that the petitioners had produced certain documents, out of these certified copies which are exhibited. A perusal of the cross-examination of DW3/Durgesh Naik, the Excise Inspector would show that this witness was also cross-examined on some of these documents. Nothing precluded the petitioners from producing the certified copies obtained in the year 2006 immediately thereafter. It would further appear that the petitioners had preferred an application Exhibit 190 for issuance of summons to the Excise Authorities for production of the documents of the two files pertaining to the excise licences bearing no.129/1992 and 63/1992. After that application was dismissed, this Court, while refusing to interfere with the order has held that in case the Court finds any discrepancy with regard to the documents “and in case such aspect is material to decide the matter in controversy in the suit, it would be open to the Court to direct the concerned authority to produce the files in accordance with law”. It is thereafter that the petitioners filed the application Exhibit 193 for leave to produce the documents. The main ground appears to be that on comparison of the two sets one obtained in the year 2006 and the

other in the year, 2015 as also the comparison of the two sets with the documents produced by the respondents/defendants, it is necessary to “expose the fraud sought to be played by the defendants”. In this regard the learned Trial Court has referred to the submission on behalf of the petitioners as to some manipulation which is there in plan (Exhibit 81) which is produced by DW1 which does not bear any stamp on the front side. A copy obtained by the petitioners in the year 2006 of the same plan also does not bear any date stamp. However, according to the petitioners, the copy obtained in the year, 2015 there is a stamp on the said plan. The Trial Court has found that the documents are obtained from a public authority and, thus, it was not conceivable that the respondents/defendants will have access to the same. It has also been found that the stamp shows that the plan was given to the Exercise Department on 27/10/1990 which would indeed support the case of respondents/defendants. In para 18 of the impugned order, the learned Trial Court has found that unless and until it is shown that the documents are relevant, the production cannot be allowed, on vague allegations and for the comparison of both the sets inasmuch as the manipulation even if accepted, has no bearing on the controversy, as the same cannot be attributed to the respondents. A bare perusal of the issue nos.3 & 4 would show that no exception can be taken to the finding recorded by the Trial Court that the production of the documents would not be necessary

so as to lead evidence in rebuttal on issues nos.3 & 4.

14. In the case of ***Bipin Shantilal Panchal*** (supra) the Hon'ble Supreme Court has disapproved the practice of passing detailed order allowing or rejecting the objection and then giving time by suspending the trial to enable the parties concerned to move the higher Court. It has been held that, instead, the Court should make a notice of such objection and decide it at the stage of the final judgment. A perusal of the judgment of the Hon'ble Supreme Court would clearly show that it pertains to the 'evidence-taking stage' and an objection being raised for a document being marked as an exhibit (during oral evidence of a witness). It is in such a case that the Court can briefly record the objection as raised and then proceed to decide the same at the stage of the final judgment.

In the present case, we are concerned with a plea for production of documents in rebuttal.

15. In the case of ***Smt. Chitrakala Fal Dessai*** (supra) it has been inter alia held that as a general rule the Court should not deny leave to produce documents. It has been further held that the Court will have to ensure that all documents which assist it to resolve the controversy before it in an efficient manner are available for its perusal. Unless the

Court comes to the conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the Court should not generally deny leave to produce documents.

It can thus be seen that what is stated is the general rule which is again subject to the condition that the Court will have to come to a conclusion that the documents are relevant and necessary to assist it to resolve the controversy before it in an efficient manner.

16. Turning to the present case and as noticed earlier, the petitioners have already produced some of the documents relating to the two excise licences. The relevant witnesses including DW1 and DW3 have been cross-examined and the only ground on which the production is now sought is of a necessity of the comparison of the two sets obtained in 2006 and 2015 and the one produced by the defendants. Except the plan (Exhibit 81) in respect of which, there is some allegation about absence of stamp in the copy obtained in 2006 and the one produced by DW1 on one hand and copy obtained in the year 2015, which bears such stamp, the allegations on the basis of which the need for comparison is claimed, are vague. I do not find that the refusal by the Trial Court to act on the same can be said to be a jurisdictional error requiring interference under Article 227 of the Constitution of India.

17. In the result, the petition is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.

NH/-