

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.981 OF 2015

Mr.Parmanand Hansraj Thakkar)... Petitioner
V/s.
Mrs.Nitasha Milind Padole)... Respondent

Mr.Sarthak S.Diwan for petitioner.
Mr.Abhijeet A.Desai a/w Ms.Vrushali Maindad for respondent.

CORAM: K.R.SHRIRAM, J.

DATED : 3.3.2015.

P.C. :

1. This writ petition is filed challenging the order passed by the trial court rejecting an application of the petitioner to issue witness summons to a police officer who had investigated the case.

2. The petitioner is the original defendant in the trial court and the respondent herein is the plaintiff-landlord in the trial court. The present dispute pertains to a row-house admeasuring about 198.88 sq. mtrs. which is owned by the respondent herein. Pursuant to the leave and license agreement dated 1.12.2006 the said suit premises was given to the petitioner herein for a period of 24 months for a license fees of Rs.3,48,000/- and an amount of Rs.14,500/- as interest free deposit. After the expiry of the license period, the petitioner herein refused to hand over possession of the suit premises. It was for this reason, the suit came to be filed by the

respondent seeking decree of possession and other consequential reliefs. The written statement was filed, issues were framed and the trial began in the suit. The allegations and counter allegations were made and police complaints were filed. The petitioner filed the police complaint at Wanowrie police station and on the basis of inquiry, FIR No.31 of 2009 came to be registered.

3 On the application of the petitioner, witness summons came to be issued to the police at Wanowrie police station. One Mr.Raghunath Vithoba Sodarwar, the police Foujdar came and deposed in the matter in response to the summons issued by the trial court. The said Police Foujdar was also cross-examined. The evidence of the Police Foujdar was completed on or about 13.5.2013.

4 Almost 18 months later, the petitioner herein filed an application for issuance of witness summons to one Mr.Kanase who was the police officer at the Wanowrie police station when the FIR No.31 of 2009 was registered. It is necessary to note that the petitioner herein had closed his evidence before the trial court. The reason why the petitioner wanted the witness summons to be issued to Mr.Kanase after closure of his evidence, was because it was Mr.Kanase who was the Police officer/Inspector at Wanowrie police station when the FIR was lodged. The trial court after considering the application rejected the same on the ground that the witness from Wanowrie police station has already been examined and also cross-examined and no government record is personalised.

5 Against this order, the present petition is filed.

6 I have considered the application of the petitioner, that came to be rejected. The only reason that is stated in the application is that when the petitioner filed a complaint/FIR in January-2009 against the husband of the respondent, the said Mr.Kanase was the police officer incharge and he had investigated the complaint. It is stated that the said Mr.Kanase had personal knowledge and will be able to throw light on relevant and important facts and findings of the proceedings.

7 I find nothing wrong in the order of the trial court rejecting the application. Any police officer who had investigated the matter would file a report. It was entirely open for the petitioner to call upon the earlier witness to bring those reports on record. The counsel across the bar stated that even the FIR has not been exhibited. Nothing prevented the petitioner to call upon the police foudar to produce the FIR to the Court. Moreover, if according to the petitioner, Mr.Kanase had personal knowledge, even though he was transferred in between, nothing prevented the petitioner from applying to the court to issue witness summons to Mr.Kanase. Therefore, it is quite obvious that the intention seems to be to delay the proceedings.

8 In the circumstances, writ petition is rejected.

(K.R.SHRIRAM, J.)