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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7329 OF 2014

Pralhad N. Pawar	..	Petitioner.
V/s.		
Shahid Latif Mukhtar Ahmed	..	Respondent.

Mr. Mahendra N. Sandhyanshiv, for the Petitioner.
Mr. N. R. Bubna, for Respondent No.1.

CORAM: M.S.SONAK,J.
DATE : 13th APRIL, 2015.

PC:-

This Petition challenges the order dated 21st January, 2014, by which learned Civil Judge has rejected Petitioner's application for framing an issue as to whether the Respondent-Plaintiff is an "agriculturalist" and referred the same to the authorities constituted under the Bombay Tenancy and Agricultural Act, 1948 (the said Act).

2 The suit as instituted, is for specific performance of agreement dated 10th May, 2012. There is no dispute that the Petitioner-Defendant has received an amount of Rs.25 lakhs in pursuance of agreement dated 10th May, 2012, although, it is the case of the Respondent that an amount of Rs.30 lakhs has been paid to the Petitioner. In the original written statement, the Petitioner denied that the Respondent was agriculturalists and stated that to the best of Petitioner's knowledge, Respondent does not own any agricultural land. In the suit,

issues have already been cast and the Plaintiff's evidence has progressed substantially. At the stage when the matter was posted for cross examination of one of the Respondent-witness, the Petitioner by application dated 1st August, 2013, applied for framing of an issue as to whether the Respondent is an agriculturalist and further for the reference of the same to the authorities under the said Act, for adjudication.

3 The learned Counsel for the Petitioner submitted that the issue as to whether or not the Petitioner is an agriculturalist can only be decided by the authorities under the said Act.

4 In my judgment, the peculiar facts and circumstances of the present case, there is reason to interfere with the impugned order. The denial in the written statement of the Petitioner is evasive. In any case, the denial is based upon the Petitioner's impression that the Respondent does not own any agricultural property. The impugned order records that the Respondent has produced on record ample material which indicates that the Respondent not only owns agricultural property but also cultivates the same. In such circumstances, it does appear that the application for re-cast of issue was made belatedly, only for the purpose of protracting the trial.

5 In order to tests the bona fides of the Petitioner, this Court, had adjourned the matter, in order to enable the Petitioner to make a statement whether the Petitioner was willing to deposit in the Court an amount of Rs.25 lakhs admittedly received by the Petitioner in pursuance of the agreement dated 10th May, 2012. The learned Counsel for the Petitioner has however stated that the Petitioner is not willing to deposit the said amount in the Civil Court.

5 Although, it is true that issue as to whether or not a person is an agriculturalist is required to be decided by the authorities under the said Act, there is no requirement in every case to frame such issues or to make reference of such issue to the authorities under the said Act. In the case of *Housabai Balu Patil v/s. Smt. Kamal Chougunda Patil, 2002 (2) Mah. L. J. 440*, this Court has held that even though the issue of tenancy is required to be referred to the authorities under the said Act, the need for such reference arises only when there are sufficient and clear pleadings and the claim is bona fide. On basis of a vague plea, unaccompanied by any bona fides, a party cannot insist upon reference.

6 Applying the aforesaid principle in the present case, it is clear that the issue which the Petitioner seeks to raise, in the facts and circumstances of the present case, is frivolous, lacking in good faith and only to protract the trial in the suit.

7 Accordingly, there is no jurisdictional error or perversity of approach in making impugned order.

8 Petition is accordingly dismissed. There shall be no order as to costs.

(M.S.SONAK,J.)