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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10742 OF 2015

Mrs.Abanti Padma Dash .. Petitioner
Vs.
Mr.Firoz Abdul Sattar Memon .. Respondent

Mr.Madhav J.Jamdar, Advocate for the Petitioner.
Mr.Rajesh S.Datar, Advocate for the Respondent.

CORAM : R.G.KETKAR, J.
DATED : 19th NOVEMBER, 2015

P.C. :

. Heard Mr.Madhav J.Jamdar, learned Counsel for the petitioner and Mr.Rajesh S. Datar, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant has challenged the judgment and order dated 11/03/2015 passed by the learned 2nd Joint Civil Judge, Senior Division, Kalyan below Exhibit 25 in Special Civil Suit No. 100 of 2014. By that order, the learned trial Judge rejected the application made by the petitioner under Order 11 Rule 14 of Code of Civil Procedure, 1908 (for short 'C.P.C.') for direction to the respondent-plaintiff to produce the details of the amount of consideration paid by him to the defendant and for production of 3 years income tax / sales tax returns of the plaintiff.

3. Mr.Jamdar submitted that respondent-plaintiff has

instituted Suit for specific performance of contract dated 30/08/2012. Clause 2 thereof records that plaintiff has agreed to pay amount of Rs. 30 lacs to the petitioner herein and he claims to have paid Rs. 30 lacs by cash at the time of registration of the document. He submitted that plaintiff has paid Rs. 20 lacs to the husband of the defendant. The husband of the defendant promised to return amount of Rs.20 lacs with interest of Rs.10 lacs to the plaintiff. In other words, he submitted that defendant did not admit receipt of Rs. 30 lacs. The defendant, therefore, took out application at Exhibit 25 inter alia contending that she is not in receipt of Rs. 30 lacs and the document was executed by way of security for repayment of amount of Rs.20 lacs given by the plaintiff to the husband of the defendant for business. The plaintiff has not given details or documents as regards how he collected Rs. 30 lacs.

4. The defendant, therefore, filed application for directing the plaintiff to produce the details as to how the consideration of Rs.30 lacs was paid by him to the defendant as also to file 3 year's income tax / sales tax returns. He further submitted that by the impugned order, the learned trial Judge rejected the application on the ground that income tax returns are the personal information and the plaintiff cannot be compelled to disclose such information. He submitted that in fact Section 137 of the Income Tax Act, 1961 is deleted. He also relied upon Order 11 Rule 14 of C.P.C. The

learned trial judge, therefore, was not justified in rejecting the application.

5. On the other hand, Mr.Datar submitted that by registered agreement for sale dated 30/08/2012, the defendant agreed to sell the suit property for a consideration of Rs. 30 lacs which was paid to her in cash at the time of registration. In fact, in paragraph 4 of the written statement, the defendant contended that husband of the defendant is willing to pay Rs. 30 lacs. He, therefore, submitted that the defendant admitted receipt of Rs. 30 lacs.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The learned trial Judge rejected the application on the ground that in the absence of documentary specification about the payment of Rs. 30 lacs by the plaintiff, the defendant can pray for drawing adverse inference against the plaintiff. That apart, prima facie, the agreement of sale is registered and there is recital that plaintiff has paid Rs. 30 lacs in cash to the defendant. In paragraph 4 of the written statement, the defendant contended that husband of the defendant is ready to pay amount of Rs. 30 lacs to the plaintiff. It is further contended therein that defendant received amount of Rs. 20 lacs and that is to be repaid along with interest of Rs.10 lacs. The question is whether defendant received Rs.20 lacs as a security for repayment of Rs.20 lacs and husband of the defendant has agreed

to pay Rs. 10 lacs over and above Rs. 20 lacs is a matter of evidence.

7. In case of *Indian Overseas Bank Vs. Shreekrishna Woollen Mils Pvt.Ltd.*, **AIR 1988 Bombay 343**, this Court has held that the production of the documents under Order 11 Rule 14 is at the discretion of the Court. In the case of *Kamleshsingh Harnamsingh Chowhan Vs. Jayalaxmi Kantilal*, **2009(1) Mh.L.J., 959**, this Court has held that the Court has to satisfy itself about expediency, relevancy and justness of the production of the documents sought for under Order 11 Rule 14 of C.P.C. The ultimate test for the Court to consider is whether the production of the documents would be necessary for fairly disposing of the Suit. In the light of the decisions, if the tests laid down in the aforesaid cases are applied to the facts of the present case, it can hardly be said that documents in question are necessary for fairly disposal of the Suit.

8. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)