

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6981 OF 2015

Vipinchandra Harkisondas Saraiya and Ors.] ... Petitioners

Versus

Mohamed Yusuf Noorani and Ors.] ... Respondents

Mr. Avinash H. Phatangare i/b M/s. Shaunak Satpute & Co. for
Petitioners.

Mr. Uday Bobde a/w Ms. Rubia Taneja & Ms. Shama Taneja for
Respondents.

CORAM :- M. S. SONAK, J.

DATE :- JULY 29, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of the learned
Counsel for parties, Rule is made returnable forthwith.
3. The challenge in this petition is to the order dated
29/03/2014 as also certain consequential orders, the effect of which is
that the Petitioners have been denied leave to examine DW 3 in
respect of the documents received under the RTI Act as per
application dated 08/12/2010.

4. The impugned order was made below Exh.64 taken out by the Petitioners seeking recall of DW 3 for examination in the context of documents received under the RTI Act in pursuance of applications dated 08/12/2010 and 31/12/2010. The application has been allowed insofar as documents received in pursuance of application dated 31/12/2010 are concerned. However, there is an omission with regard to the documents received in pursuance of application dated 08/12/2010.

5. The learned Counsel for Petitioners submits that the omission to refer to the application dated 08/12/2010 is, in fact, ministerial. The learned Counsel for Petitioners, however, states that the Presiding Officer who made the order dated 29/03/2014 has since been transferred and therefore correction could not be applied for.

6. The learned Counsel for Respondents, however, submits that in making the order dated 29/03/2014, the clear intention was to grant leave only in respect of the documents received in pursuance of the application dated 31/12/2010. In any case, the learned Counsel for Respondents submitted that the Petitioners are bent upon delaying the proceedings to the prejudice of the Respondents.

7. Having considered the submissions of the learned Counsel for parties and perused the record, it does appear that the omission to refer the application dated 08/12/2010 is unintentional. The reasoning in the order dated 29/03/2014 applies equally to the

information received by the Petitioners in pursuance of the applications dated 08/12/2010 and 31/12/2010. Accordingly, it could have not been intended that that leave is granted only in the context of application dated 31/12/2012 and denied in the context of application dated 08/12/2010. Even if it is to be accepted that denial was intentional, then, there is no logic in such denial. Accordingly, the application at Exh.64 is required to be allowed in respect of the documents received pursuant to the application dated 08/12/2010 as well. The impugned order dated 29/03/2014 is modified accordingly.

8. By the order dated 18/03/2015, the Trial Court, has permitted marking of certain documents in evidence in pursuance of the recall of DW 3. These are the documents received under RTI Act in pursuance of application dated 31/12/2010. However, in light of order dated 29/03/2014, marking of documents obtained under the RTI Act in pursuance of the application 08/12/2010 had not been allowed. Now, that the order dated 29/03/2014 is itself modified, it needs to be clarified that the order dated 18/03/2015, to the extent it refuses to mark the documents obtained under the RTI Act in pursuance of the application dated 08/12/2010, requires interference. Accordingly, direction is issued that even the documents obtained under the RTI Act in pursuance of the application dated 08/12/2010 be marked in accordance with law.

9. Further, subject to any order that may be made in this petition, the Petitioners have filed a pursis concluding the evidence of

DW 3. Now, that the orders are being modified, for the limited purpose of re-examination in respect of the documents received under the RTI Act in pursuance of the application dated 08/12/2010, the recall of DW 3 is directed to be permitted.

10. It is made clear that this Court has not gone into the issue of admissibility or otherwise of the documents and therefore such issue should be decided by the Trial Court in accordance with law and uninfluenced by any observations made in this order. Further, the Trial Court should dispose of the proceedings in the context of preliminary objection raised by the Petitioners as expeditiously as possible and in any case, within a period of three months from the date of production of authenticated copy of this order. Both the parties, including in particular the Petitioners, should cooperate in the matter of such expeditious disposal.

11. There is considerable substance in the contentions of learned Counsel for Respondents that proceedings are being unduly protracted. Therefore, although the orders dated 29/03/2014 and 18/03/2015 are being modified, it is only proper that the Petitioners pay costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Respondents to avail the benefit of this order. Accordingly, the Petitioners are directed to pay costs of Rs.25,000/- by depositing the same in the Trial Court within a period of two weeks from today. Once such costs are deposited, the Respondents shall be at liberty to withdraw the same unconditionally. Further, the Petitioners are at

liberty to pay the costs directly to the Respondents (Original Plaintiffs). Such costs may be paid to the Respondent No.7 who shall receive the same on his own behalf and on behalf of other Respondents.

12. Rule is made absolute to the aforesaid extent.

13. All concerned co act on basis of authenticated copy of this order.

14. Parties to appear before the trial Court on 07/08/2015 and produce authenticated copy of this order.

(M. S. SONAK, J.)