

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8093 OF 2015

M/s. Sumer Builders ... Petitioner
Vs.
ABR management Solutions and others ... Respondents

Mr. P. S. Dani, Senior Advocate i/b. Yasmin Bhansali & Co. for Petitioner.
Mr. O. S. Kutty i/b. Mr. K. V. Sharefudeen for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 12TH AUGUST, 2015

P.C. :

Not on Board. At the request of Mr. Dani, taken up in the production Board.

2. Heard Mr. Dani, learned Senior Counsel for petitioner and Mr. Kutty, learned Counsel for respondent No.1. Mr. Dani states that the respondent No.1-original plaintiff is the only contesting respondent. He, therefore, orally applies for deleting rest of the respondents i.e. respondents No.2 to 7. Leave to delete respondents No.2 to 7 is granted. Amendment shall be carried out forthwith. Rule. Mr. Kutty waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original defendant No.1 has challenged the order dated 29.07.2015 passed by the learned Judge, City Civil Court, Greater Mumbai in S.U.No.945 of 2015. In that order, the learned trial Judge observed that Advocate Ms Bhansali filed Vakalatnama for defendant No.1. The said Vakalatnama does not bear seal and stamp of partnership firm

(defendant No.1). So also, as per the service affidavit, defendant No.1 is not served with writ of summons. On inquiry, Ms Bhansali submitted that Vakalatnama is signed by defendant No.6 as a partner of defendant No.1. Though defendant No.6 is served in his personal capacity, the Vakalatnama is not filed in the personal capacity. On the contrary, the Vakalatnama signed by defendant No.6 for defendant No.1, who is unserved. The learned trial Judge also did not accept the submission of Ms Bhansali that Vakalatnama be treated only for defendant No.1 and not for defendant No.6 by observing that any partner of the firm cannot file Vakalatnama for that firm unless the partner appears in his personal capacity before the Court. It was further observed that the written statement of defendant No.1, placed on record, is verified by one Mr. Rahul Shah. There is no pleading in the written statement, under what capacity Mr. Rahul Shah is authorized to sign the written statement. The learned trial Judge, therefore, did not treat that written statement as written statement of defendant No.1 as it was not in proper format as required under the provisions of C.P.C. The matter was adjourned to 22.09.2015 against defendants No.2 to 7.

4. Mr. Dani, upon taking instructions from the instructing Advocate, states that defendant No.6, who has signed Vakalatnama dated 19.05.2015 shall sign the same on his behalf as also on behalf of the defendant No.1 by removing the infirmities in the trial Court within 1 week from today. Mr. Kutty submits that in case the defendant No.6 signs the Vakalatnama in his personal capacity as also on behalf of defendant No.1 and removes other infirmities, he has no objection for the Vakalatnama and taking written statement on record.

5. In view thereof, impugned order is substituted in the form of the statement made by Mr. Dani. Defendant No.6 shall sign the

Vakalatnama on his behalf as also on behalf of the defendant No.1 by removing all other infirmities. Defendant No.6 will also remove other infirmities in the written statement. Upon removal of these infirmities, the Vakalatnama and also the written statement shall be taken on record. The trial Court shall accept the written statement and the Vakalatnama. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab