

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.25390 OF 2014

Mrs. Prabha P. Shenai of Mumbai, adult)
Indian inhabitant, carrying on business in)
the name and style of M/s. Sterling)
Engineering Co., as Sole Proprietress)
thereof at B-15, Ground Floor, Satyam)
Shopping Centre, M. G. Road,)
Ghatkopar (East), Mumbai-400 077 and)
presently residing at 401 A, Pushkar)
Accord, Lokhandwala Township, Kandivali)
East, Mumbai-400 101. .. Petitioner

Versus

M/s. Venkatesh Construction & Earch)
Movers Co., Office at Nawada Phata,)
Opp. P. J. Mhatre Vidyalaya, Nawada,)
Taluka- Panvel, District- Raigad .. Respondent

Dr. Prakash R. Shenay, CA of Petitioner present.
None for the Respondent though served.

CORAM : R.M. SAVANT, J.
DATE : 23rd JANUARY, 2015

ORAL JUDGMENT

1. Rule, looking to the challenge raised made returnable
forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 25th August, 2014 passed by the Learned Judge of the Civil Civil Court, Mumbai by which order the Notice of Motion No.2175 of 2014 came to be allowed and resultantly an order came to be passed that the no objection given by the Defendant to exhibit the documents on 10.01.2014 is allowed to be withdrawn, subject to costs of Rs.2,000/-. Further direction was issued that the Plaintiff or her Constituted Attorney to step into witness box for further examination-in-chief for admission of the documents on the next date. The payment of the costs was made condition precedent.

3. The suit in question i.e. Summary Suit No.2569 of 1998 has been filed for recovery of an amount of Rs.17,00,000/- from the Respondent. It is not necessary to go into the factual foundation laid in the suit. However, in so far as the documents are concerned, it is required to be noted that correspondence ensued between Plaintiff and the Defendant. In response to the letter of the advocate for the Plaintiff Mr. T. N. Tripathi vide his letter dated 5th October, 1998 had communicated to the advocate for the Defendant that as required by the advocate for the Defendant a meeting is fixed in the Library of the High Court on 9th October, 1998 at 3.00 p.m. To give inspection of the original documents in the matter. Thereafter by further letter dated 24th October, 1998, it has been

communicated by the advocate for the Plaintiff to the advocate for the Defendant that the inspection of the original documents is complete. Hence, the said correspondence discloses that the documents on which the Plaintiff sought to rely upon inspection of the same was given to the Defendant. The suit is now at the stage of hearing. In the suit, an application came to be filed by the Constituted Attorney of the Plaintiff which application is dated 10th January, 2014. In the said application, it is mentioned that the original documents in terms of the list were filed on 24.07.2009 and in view thereof the said documents be marked as Exhibits A to G and that after hearing of the Notice of Motion No.3792 of 2011, the parties can proceed to recording of evidence. The list of the documents comprises about 11 documents. In so far as the said application is concerned, the Trial court on the said day itself recorded the no objection of the advocate of the Defendant and in view thereof allowed the application and the documents accordingly came to be marked as exhibits. The Trial Court thereafter adjourned the suit to 27.01.2014. On 27.01.2014, the suit was adjourned to 03.02.2014 for orders. On the said day, i.e. 03.02.2014, Notice of Motion No.3792 of 2011 came to be dismissed. The Roznama according to the party in person mentions a wrong number of the Notice of Motion as being No.3794 instead of 3792. The suit was thereafter adjourned to 05.03.2014 for recording of evidence.

The suit thereafter came up on 01.04.2014 on which day, the Constituted Attorney of the Plaintiff filed an application that he does not want to lead oral evidence and that the case can be decided on the basis of documents. On the said day, at the request of the advocate for the Defendant the suit was adjourned to 24.04.2014 for the evidence of Defendant. On 24.04.2014, the suit was adjourned to 06.05.2014 as a last chance for the Defendant to file affidavit of evidence. On 06.05.2014, the advocate for the Defendant informed the Court that he wants to file necessary proceedings for recalling the order exhibiting the documents. The suit was therefore adjourned to 13.06.2014. On 13.06.2014, draft Notice of Motion along with affidavit filed by the Applicant was taken on record and leave to register the same was granted and the matter was adjourned to 27.06.2014. On 27.06.2014, the Constituted Attorney of the Plaintiff filed the affidavit in reply. The Notice of Motion was accordingly adjourned to 24.07.2014. Thereafter it was adjourned to 25.08.2014 when the impugned order came to be passed. The impugned order which is annexed to the above Petition at page No.17 passed by the Learned Judge of the City Civil Court, records that the Notice of Motion moved by the Defendant is made absolute subject to costs of Rs.2,000/-. Hence, in the said order there are no reasons appearing as to why the said motion was allowed or why the order de-exhibiting the documents of the Plaintiff

on the basis of the admission of the Defendant, which admission was permitted to be withdrawn.

4. In so far as the Notice of Motion is concerned, it is required to be noted that except stating that the advocate for the Defendant made a mistake on 20th January, 2014 by admitting the documents, there is no other reason mentioned in the affidavit in support of the motion. The Trial Court however as indicated above in the absence of there being any reason mentioned in the affidavit in support has by a cryptic order allowed the Notice of Motion. As indicated above, it is the said order dated 25.08.2014 which is taken exception to by way of the above Petition. The Respondent i.e. original Defendant is not appearing, though served. The Constituted Attorney of the Plaintiff who is her husband is appearing in person and contends that the Trial Court had erred in permitting the Defendant to withdraw the admission, in so far as the documents are concerned on the basis of which the documents were marked as exhibits. The Party in person would contend that such a course of action of de-exhibiting the documents is not permissible, unless the Court comes to a conclusion that the documents have been marked on account of any misrepresentation made to the Court. The party in person would contend that the advocate having admitted the said documents and the Court having marked the said documents, the order permitting the Defendants to withdraw the said

admission acts to the prejudice of the Plaintiff. The party in person drew this Court's attention to the correspondence which took place between the advocate for the Plaintiff and the advocate for the Defendant which has been adverted to herein above. The party in person would contend that in view of the inspection granted of the documents in the year 1998 that the said documents were admitted on 10.01.2014.

5. Having heard the party in person i.e. the Constituted Attorney of the Plaintiff, I have considered the submissions urged by him. It is an undisputed position that the documents were exhibited on 10.01.2014 in view of the no objection given by the advocate for the Defendant. The said application dated 10.01.2014 filed by the Plaintiff is preceded by the inspection given to the advocate for the Defendants of the original documents on which the Plaintiff is relying in the suit. Hence, the no objection given by the Defendant through his advocate seems to be on the basis that the inspection of the original documents were given to the Defendant in the year 1998.

6. In so far as the Notice of Motion in which impugned order is passed, as indicated above, except stating that on account of a mistake the advocate for the Defendant has given no objection, the said application is bereft of any reasons. How the Trial Court could have accepted the said

statement and set aside the order exhibiting the documents therefore, begs an answer. Once the documents were exhibited, unless the reasons are such which are bordering on misrepresentation or their authenticity or genuineness of the documents is in question the order exhibiting the documents cannot be interfered with. If the course propounded by the Defendant is permitted, then there would be no end to trials as there would be every likelihood that the Defendant would file an application for de-exhibiting the documents at a later stage. The statement made by the counsel has to be given due credence and sanctity and cannot be interfered for the asking. In my view therefore, the Trial Court had erred in passing the impugned order dated 25.08.2014 and directing the course of action that has been propounded in the impugned order. The impugned order would accordingly stand quashed and set aside and the parties would be relegated back to the position as so prevailing prior to the impugned order being passed and the Trial Court would proceed further in the suit. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms.

[R.M. SAVANT, J]