

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2984 OF 2016

Bhimrao s/o Baswantrao Patil
Age: 54 Years, Occupation: Business,
R/o.Shirpur, Madnur Mandal,
District Nizamabad,
Telangana State,
At present 119, Shastrinagar,
Garkheda, Aurangabad,
through its power of attorney holder
Shri Sidhling s/o Ramling Kore,
Age: 45 Yars, Occupation: Business,
R/o Laxmi Chowk, Mukundwadi,
Aurangabad.

..PETITIONER
(Orig.PLAINTIFF)

VERSUS

1. SICOM Limited,
Through its Regional Officer,
Anand Bhawan, Plot No.166,
N-5, South Cidco, Aurangabad.
2. Anoop s/o Prakashchandra Garg,
Age: Major, Occupation: Business,
R/o. Rajnagar, Station Road,
Aurangabad.
3. Satyanarayan s/o Madanlal Chandak,
Age: Major, Occupation: Business,
R/o. Shardhanand, Ajabnagar,
Aurangabad.
4. Vinod s/o Premchand Surana.
Age: Major, Occupation: Business,
R/o. 15, New Samarthnagar,
Aurangabad.
5. Santosh s/o Shantilal Muthiyan,
Age: Major, Occupation: Business,

R/o. Shanti, Khadkeshwar,
Aurangabad.

6. Jugalkishor s/o Chhaganlal Tapadia,
Age: Major, Occupation: Business,
R/o. Pink Palace, Samarthnagar,
Aurangabad.
7. Harinarayan s/o Bhikchand Chinchani,
Age: Major, Occupation: Business,
R/o. Raja Bazar, Aurangabad.

..RESPONDENTS
(Orig.DEFENDANTS)

Mr. Ameet R. Vaidya, Advocate for Petitioner;
Mr. S.D.Tawshikar, Advocate for Respondent No.1.

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 8th JUNE 2016

DATE OF PRONOUNCING JUDGMENT:13th JUNE,2016

JUDGMENT:

1) Heard. Rule. Rule made returnable forthwith with consent of the learned Counsel appearing for the respective parties.

2) By filing the present petition, the petitioner has challenged order dated 7.11.2015 passed by Civil Judge, Senior Division, Aurangabad in Regular Civil Suit No.718/2015

below Exhibit-34. Defendant No.1 in the aforesaid suit, who is Respondent no.1 in the present petition, had filed the aforesaid application at Exh.34 seeking directions against the plaintiff in the said civil suit, i.e. present petitioner to furnish the copies of the documents as enlisted and described in Para 5 of the said application. The present petitioner is hereinafter referred to as the plaintiff and Respondent no.1 is referred to as deft.no.1.

. It was the contention of deft.no.1 in the application at Exh.34 that under Order VII rule 14 of Code of Civil Procedure, 1908 (for short, C.P.C.) it was incumbent on part of the plaintiff to furnish on record the documents referred to in the plaint and relied upon by him in support of his claim. It was the further contention of deft.no.1 that for filing the written statement in the matter, it was necessary for deft.no.1 to look into the documents relied upon by the plaintiff in support of his claim. The plaintiff filed his say to the said

application, stating that the application so filed was false and frivolous and was liable to be dismissed in *limine*. It was the further contention of the plaintiff that the said application was not supported by any law and the Order VII Rule 14 of C.P.C. was inapplicable. The plaintiff, therefore, had prayed for rejection of the said application with costs.

3) The learned Civil Judge, after having heard the learned counsel appearing for the parties, passed an order thereby directing the plaintiff to produce the documents as asked for by the defendant No.1. In the said order the learned Civil Judge has also clarified that non-compliance of the Order would amount to non-registration of the plaintiff in view of the provision under Order IV Rule 1(2) of C.P.C. Aggrieved thereby, the plaintiff has preferred the present petition.

4) Shri Ameet Vaidya, learned Counsel

appearing for the petitioner, assailed the impugned order as an illegal exercise of jurisdiction by the learned trial Judge. The learned Counsel further submitted that the learned Civil Judge has failed in not considering that the documents required to be produced by deft.no.1 by filing the application at Exh.34, are neither the documents that are relied upon by the plaintiff nor the claim of the plaintiff is based on the said documents. The learned counsel further submitted that the mode, manner, volume and nature of evidence oral as well as documentary, is the domain of the plaintiff or the party litigant. The learned Counsel further submitted that it is alien to the rule of procedure and power of the Court to direct or dictate the mode or manner of evidence. The learned Counsel, therefore, prayed for setting aside the impugned order.

5) Shri Tawshikar, learned Counsel appearing for Respondent No.1, opposed the

submissions advanced on behalf of the petitioner. The learned Counsel submitted that in the application at Exh.34 submitted by deft.no.1 before the trial court, it has been specifically averred by him that the plaintiff has referred to and relied upon the documents enlisted in Para 5 of the said application. The learned counsel further submitted that it is also stated in the application that it was not possible for deft.no.1 to file its written statement without knowing the contents of the documents referred to and relied upon by the plaintiff in support of his claim.

. The learned counsel further submitted that in the say filed by the plaintiff to the said application, he has nowhere contended that the documents, production of which was sought for by deft.No.1, are not relied upon by the plaintiff or that the claim of the plaintiff is not based on the said documents or that the said documents were not in his possession, but were in possession of somebody else. In the

circumstances, according to learned Counsel, the learned Civil Judge has rightly directed the plaintiff to produce the said documents on record as asked by deft.No.1 in his aforesaid application. The learned Counsel further submitted that after passing of the impugned order the plaintiff has sought time at least on five occasions to comply the order passed below Exh.34. In the circumstances, according to learned Counsel, the plaintiff is estopped from challenging the impugned order. The learned Counsel, therefore, prayed for dismissal of the petition.

6) After having heard the learned Counsel appearing for the respective parties and on perusal of the impugned order and the documents placed on record, apparently it does not appear to me that any interference is required in the impugned order.

. Order VII Rule 14 of C.P.C. reads thus,

"14. Production of document on which

plaintiff sues or relies -

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the

suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

The aforesaid Rule directs the plaintiff to file the documents, which he intends to rely and which are in his power and possession along with the plaint. All such documents should also be entered in the list of documents and where a document entered in the list of documents is not produced along with the plaint, it shall not be received in evidence without the leave of the Court.

7) The object of Rule 14 is to apprise the defendant regarding the foundation of plaintiff's claim and also to exclude production of document of a doubtful nature at a belated state.

8) As mentioned earlier, defendant no.1 in

the application filed by him at Exh.34, has categorically stated that to enable deft.no.1 for filing his written statement, the production of the documents referred to and relied upon by the plaintiff in support of his claim was must. Defendant No.1 was thus fully justified in making such application and seeking production of the concerned documents. Moreover, it was further specifically averred by defendant No.1 in the said application that the documents, production of which was sought by him, are referred to and relied upon by the plaintiff in support of his claim. In the say filed by the plaintiff to the said application, the plaintiff has not denied or disputed the averments made or the contentions raised by deft.no.1 in the said application. A vague reply is given by the plaintiff stating that the application was false and frivolous and that it was not supported by any law and that the provisions of Order VII Rule 14 were inapplicable to the said application. Though the plaintiff has alleged the impugned order to be cryptic, in

fact the say filed by the plaintiff to the application at Exh.34 appears cryptic. The plaintiff has not explained as to how the said application can be said to be false and frivolous. It has also not been explained as to how the provisions of order VII Rule 14 were not applicable. Even in the present petition, nothing has been stated in regard to the aforesaid objection as about falsity of the application and non-applicability of order VII Rule 14.

9) It is the contention of the petitioner/plaintiff that the court below ought to have considered that the documents referred to in the application at Exh.34 are neither the documents that are relied upon by the plaintiff nor the plaintiff claimed to be in possession or power of the said documents nor the plaintiff has sued upon the said documents. The contention so raised by the petitioner is apparently unacceptable. As mentioned earlier, it was the

specific contention of deft.no.1 in the application at Exh.34 that the plaintiff has referred to and relied upon the documents enlisted and described in Para 5 of the said application. If it is the contention of the plaintiff that the averment so made in the application was incorrect and false, the plaintiff must have submitted a specific reply to the said averments and ought to have specifically denied the said fact. It was incumbent on the part of the plaintiff to disclose whether he was relying on the said documents and whether the said documents were in his possession. In absence of any such explanation from the plaintiff, there was no reason for the learned Civil Court to disbelieve the averments made by deft.no.1 in the application at Exh.34. It was the duty of the plaintiff to explain whether he was relying on the documents concerned and not of the Court to see whether the plaintiff is relying on the documents, in question, and whether the said documents were in his possession or not.

10) Further, the plaintiff has failed in substantiating his contentions that the application submitted by deft.no.1 at Exh.34 was false and frivolous and that the provisions of Order VII Rule 14 were not applicable in the present case. On the contrary, as mentioned herein above, Rule 14 directs the plaintiff to file the documents which he intends to rely on and which are in his possession and power along with the plaint. The provision as to the production of documents is based on sound reasons and non compliance thereof cannot be treated lightly particularly when the production is insisted by the defendant.

11) Secondly, as is revealed from the material on record the plaintiff did seek time from the civil court to comply the order passed by the court below at Exh. 34 at lease on five occasions. Nothing is brought to my notice showing that at any point of time, the petitioner/plaintiff has disclosed to the civil

court that he intends to challenge the said order or that the documents directed to be produced on record were not in his possession. As such, the petitioner is in fact, estopped from raising any objection to the impugned order. Even otherwise, as discussed herein above, there is no merit in the objection raised by the petitioner. I do not find any error in the impugned order. No interference is, therefore called for in the said order. The writ petition is devoid of any substance and deserves to be dismissed. It is accordingly dismissed with costs. Rule discharged.

sd/-
(P.R.BORA,J.)

bdv/

fldr8.6.2016