IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.3745 OF 2015
WITH
WRIT PETITION NO.3746 OF 2015

Mahesh s/o Vaijnathrao Mahajan,
Age 42 years, Occu. Business,
R/o Kailash Nagar, Near Shrinagar
Bus Stop, opposite Panchsheel Dresses,
Nanded, Taluka and Dist. Nanded ..Petitioner

Versus

1. Ashok s/o Kashinathrao Mogadpally,
Age 68 years, Occu. Business,
R/o Kailash Nagar,
Besides Prajapati Bhramakumari
Centre, Nanded

2. Deepak s/o Nagorao Narwade,
Age 42 years, Occu. Business,
R/o Kailash Nagar, Jangamwadi,
Nanded ..Respondents

Mr M.V. Ghatge, Advocate for petitioner
Mr V.V. Bhavthankar, Advocate for respondent No.1
Mr S.V. Kurundkar, Advocate for respondent No.2

CORAM : T.V. NALAWADE, J.

DATE : 24th August 2016

PER COURT

1. The first petition is filed to challenge the order made on Exh.124 and the second petition is filed to challenge the order made on Exh.130. The applications were filed by the present petitioner in Special Civil Suit No.6 of 2011, which is pending in the Court of 2nd Joint Civil Judge, Senior Division, Nanded. Both the applications are rejected by the trial Court. Heard both the sides.

2. The aforesaid suit is filed for relief of specific performance of contract of sale by the present petitioner. The respondent No.1

Ashok is uncle of present petitioner and respondent No.2 Deepak is a purchaser of the suit property from respondent No.1. It is a shop premises and it is the case of plaintiff that under oral agreement dated 25th August 2008 between him and Ashok, Ashok had agreed to sell the property and on the date of agreement, part of consideration amount of Rs.1 lakh was paid. It is the case of plaintiff that amount was handed over to a mediator Ashok Ganjewar and as some proceeding was pending, the amount was to be given by Ashok Ganjewar to defendant No.1 Ashok only after withdrawal of that proceeding. It is the case of plaintiff that he subsequently offered the remaining consideration viz. Rs. 3,51,000/- and requested defendant No.1 to execute sale deed but he avoided to execute the sale deed on one or other pretext. As the sale deed was executed in 2009 in favour of defendant No.2, plaintiff filed suit for specific performance of contract on 24.1.2011.

3. The submissions made show that both the sides have closed the evidence and the matter was fixed for final arguments. At this stage, the aforesaid two applications were made. In one application, plaintiff had prayed for permission to produce some documents like income tax returns and he wanted to prove that in the returns submitted for 2009-2010, he had shown the aforesaid amount of Rs.1 lakh as amount given to defendant No.1. In other application, he had prayed for permission to call witness, Tax Consultant or Officer of Income Tax department to prove that in returns, he had mentioned the aforesaid amount.

4. It appears that the plaintiff has already examined aforesaid Ashok Ganjewar as his witness to prove the oral agreement and to prove the consideration paid to defendant No.1. Plaintiff is a shop owner and it can be said that he must be having the record in respect of possession of cash amount of Rs.1 lakh. It is the case of plaintiff that in one incident, the said record was destroyed and so, he is not in a position to produce the record like accounts. Even if there was the account, in view of provisions of Section 34 of the Evidence Act, that circumstance would have become only a circumstance relevant to the case and only on that basis inference can not be drawn. It needs to be mentioned that trial Court will be required to appreciate the circumstance in view of provisions of Section 34 of Evidence Act which is the job of the trial Court. In any case, as per the submission made and the order made by the trial Court, plaintiff knew that he had made such mention in the income tax returns and so, he ought to have taken steps if he really wanted to lead the evidence on it as one of the circumstance before closing evidence. Learned Counsel for the plaintiff submitted that in view of provisions of Order XI, Rule 14 of Code of Civil Procedure, the Court could not have considered the diligence and Court ought to have considered only the circumstance that such record is relevant. There are many circumstances and it can be said that plaintiff now wants to strengthen his case. If the amount was allegedly given by him on 25.8.2008, in ordinary case, he would have mentioned this transaction in the returns of 2008-2009, but it is his contention that he made a mention in the returns of 2009-2010. All these circumstances need to be considered when the application is

made for production of document and for examination of witness, when both the sides have closed the evidence. Aforesaid Ashok Ganjewar is examined and plaintiff wants to prove that there was oral agreement of sale. This Court holds that trial Court has not committed any error in rejecting both the applications. So, both the applications stand rejected.

5. Writ Petition is dismissed.

6. Time of four weeks is granted to the petitioner to challenge the order.

(T.V. NALAWADE, J.)

vvr