

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

Writ Petition No.8214 of 2015

M/s. Pride Constro Ventures Limited
Liability Partnership, Aurangabad
through its partners
Naveen S/o Hanumantprasad Bagadia
And Another. **.. Petitioners.**

Versus

Bhosale Builders & Developers Pvt. Ltd.
Harsool, Taluka Aurangabad
Through its Director
Ramdas s/o. Bajirao Bhosale. **.. Respondent.**

Shri. Mukesh K. Goyanka, Advocate, for petitioners.

Shri. A.D. Kasliwal, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 25 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 13 in Special Civil Suit No.210/2014 which is pending in the Court of the Civil Judge, Senior Division, Aurangabad. Both the sides are heard.

2) The suit is filed by respondent-Bhosale Builders for recovery of money. It is the case of the plaintiff that one property is sold to defendant by plaintiff and in the sale deed, as per the agreement, there was mention that amount of Rs.1,86,50,000/- was to be paid to the plaintiff and for that cheque No.091107 dated 27-12-2011 was given to the plaintiff. Sale deed was executed on 19-7-2011 and so it was post dated cheque. Under the same sale deed, another cheque bearing No.091110 of Rs.1,53,50,000/- was given to Shriram Realtors and this cheque was dated 27-12-2011. Both these cheques were drawn on Union Bank of India. Thus, there was agreement to pay the amount of Rs.1,86,50,000/- to the plaintiff.

3) It is the case of the plaintiff that only at the time of encashment of the cheque, he realised that the cheque amount was of Rs.1,53,50,000/- in stead of Rs.1,83,50,000/-. It is contended that the defendant had given assurance to pay the remaining amount and so the amount was realised. It is contended that subsequently the defendant avoided to make payment of this amount and so cause of action took place for the suit. The

difference between aforesaid two cheques and interest on difference is Rs.42,79,150/-. According to the plaintiff, he is entitled to get this money as the amount is due as consideration for sale.

4) The submissions made and the written statement filed by the petitioner show that the cheque of the amount of Rs.1,86,50,000/- was given to Shriram Realtors. In view of these circumstances, the defendant made application at Exhibit 13 and prayed for addition of Shriram Realtors as party defendant in the suit. The application is rejected by the trial Court after hearing both the sides.

5) The learned counsel for the petitioner placed reliance on the case reported as **AIR 1982 Calcutta 370 (Shikha Singh v Dina Chakrabarty)**. Some observations are made by the High Court by referring to the provisions of Order 1 Rule 13 and Rule 10(2) of the Civil Procedure Code and the observations are made with regard to necessary party. It cannot be disputed that a party can be called as necessary party without whom no order can be

effectively made. The facts of the reported case were totally different. In the present matter there is sale deed having aforesaid contents and on that basis the plaintiff is claiming the amount from defendant. Court will require to decide the entitlement of the plaintiff on the basis of rival contentions and the sale deed and for that, presence of the aforesaid third party is not at all necessary. It is open to the defendant to prove that the payment made to the third party amounts to discharge of liability towards the plaintiff. For that said party need not be made defendant. In view of these circumstances, this Court holds that there is no reason to interfere in the order made by the trial Court. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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