

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 8912 OF 2014

WITH

CONT. PETITION NO. 431 OF 2014

IN WP/10276/2012

MOHD. ABDULLAH S/O ABDUL REHMAN BANYEEM

VERSUS

JONANALGADDA VENKATA MOHAN KUMAR AND ANOTHER

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Advocate for Petitioner : Mr. Kazi S.S.

Advocate for Respondents : Mr. Milind M. Patil(Beedkar)

CORAM : V. K. JADHAV, J.

DATE : 22nd February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2. At this stage, learned counsel for the petitioner submits the petitioner is not pressing the relief in terms of prayer clause (C) of the writ petition.

3. The suit [RCS No.470/2012 (Orig. Special Civil Suit No.58/2002)] filed by the respondent Bank came to be dismissed vide judgment and decree dated 14.02.2006 and therefore, the counterclaim filed by the petitioner is only pending. During the pendency of the counter-claim, the petitioner filed application under Order 26 Rule 11 of

the Civil Procedure Code for appointment of Chartered Accountant as Court commissioner for calculating details of petitioners loan account No.6/13 maintained by the respondent Bank and submit factual position before the trial court. Since the said application was rejected by the trial court by order dated 19.04.2012, the petitioner approached this Court by filing writ petition No. 10276/2012. This Court, by order dated 23.09.2013 in writ petition No.10276/2012, while disposing of the petition, placed the petitioner at liberty to furnish a list of documents on the basis of letter of his Chartered Accountant dated 13.07.2013 before the trial court and thereupon, the trial court may call the respondent Bank to furnish those documents whichever are available. This Court further made it clear that the documents should pertain to extract of loan account of petitioner and entries made therein.

4. Pursuant to the said directions, the petitioner filed application Exh.195 before the trial Court and accordingly placed his demand about the documents as detailed in the said application. The learned Judge of the trial Court has called upon the respondent Bank to file its say. The respondent Bank has submitted certain documents along-with list Exh.207 (Exh.J in this petition)

The learned Judge of the trial court, by the impugned order dated 10.06.2014, observed that the Bank has furnished the documents as per the list which are available and in such situation application is filed. The petitioner, thereafter, has filed Contempt Petition No. 431/2014 for non compliance of the order dated 23.09.2013 passed by this Court in Writ Petition No 10276/2012 and also filed the present Writ Petition No.8912/2014.

5. The learned counsel for the petitioner submits that in response to application Exh. 195, the respondent Bank has not given any details as to which documents are available with the Bank as per the list of documents mentioned in Application Exh. 195 and the documents which are not available with the Bank. The learned counsel further submits that it is not clear from the List Exh. 207, whether the documents as referred in Exh. 195 are available with the Bank or not. In absence of these details, the learned Judge of the trial court has casually passed the order by observing that the defendant Bank has furnished the documents as per list which are available and accordingly filed the application Exh. 195.

6. The learned counsel for the respondent Bank submits that the respondent Bank has submitted the documents as

per list Exh. 207 and those are the documents available with the Bank. The learned counsel submits that since the documents available with the Bank were submitted before the trial court, the trial court has rightly passed the order dated 10.06.2014.

7. It appears from the contents of the application Exh. 195 that pursuant to the directions given by this court by order dated 23.09.2013 in Writ Petition No. 10276/2012, the petitioner has given list of certain documents on the basis of letter of his Chartered accountant dated 13.07.2013. It appears that the trial court has not bothered even to call upon the respondent Bank to furnish the documents which are available. There is no formal order to that effect even though directed by this Court. The respondent Bank has also failed to demonstrate as to which are the documents as detailed in the application Exh. 195 are available with it. The learned trial court even has not bothered to verify whether the documents produced by the respondent Bank are as per the documents mentioned in application Exh. 195 and if not so, whether those documents are available with the Bank or not. The learned Judge of the trial court, in a very casual manner, passed order below Exh. 195 and filed the said application.

8. Thus, the order passed below Exh.195 dated 10.06.2014 is liable to be quashed and set aside and application Exh. 195 is required to be considered afresh. Hence following order:

O R D E R

- i. Order dated 10.06.2014 passed below Exh.195 in RCS No.470/2012 is hereby quashed and set aside.
 - ii. The learned Civil Judge, Senior Division, Nanded is hereby directed to consider application Exh. 195 afresh in the light of observations made in this order.
 - iii. The respondent Bank is at liberty to file additional reply to demonstrate as to which of the documents mentioned in Exh. 195 are available with the Bank and the documents which are not available with the Bank.
9. Writ petition No.8912/2014 is disposed of in the above terms. No order as to costs.
10. In the light of disposal of Writ Petition No. 8912/2014, Contempt Petition No. 431/2014 in Writ Petition No. 10276/2012 also stand disposed of.

(V. K. JADHAV, J.)