

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 2881 OF 2016

Vayu Ramesh Garware.

.. Petitioner

Vs.

Diya Garware Ibanez & ors.

.. Respondents

Mr.Ashish Kamat a/w Kunal Mehta and Ms.Shivani Parikh i/b
Crawford Bayley & Co., for the Petitioner.

Mr.Nikhil Sakhardande a/w Rohan Rajadhyaksha, Perus Anklesaria,
Ram Kakkar and Kunal Katariya i/b AZB and Partners, for
Respondent No.1.

***CORAM : N.M.Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

Heard learned counsel for the parties. In view of the order that is proposed to be passed, the presence of Respondent Nos.2 to 5 is not required at present. Respondent No.1 is contesting Respondent represented through an advocate.

2. The Petitioner has challenged the order passed by the learned Civil Judge Senior Division Pune, dated 7 January 2016 rejecting the application for issuance of witness summons, in the alternative to appoint competent person to inspect the statement of accounts and fixed deposit receipts of various companies with the banks as sought

for by the Petitioner. The learned Judge has held that an application taken up by the Petitioner seeking such directions can be issued only to the persons who are party to the suit and that similar relief has been claimed by the Petitioner in separate proceedings.

3. The learned counsel for the Petitioner submitted that the applications have been moved in aid of the relief sought by the Petitioner under Order XXXIX Rule 2A in which the grievance is made that the Respondent No.1 has breached the orders of the Court. In the impugned order a reference is made to the submissions that the application is made under Order XI Rule 12 and 14 of the Code of Civil Procedure and discretion has been sought. The aspect that such directions are necessary for complete adjudication of an application under Order XXXIX Rule 2A does not appear to be adverted to and as reflected in the impugned order it has not been argued. If these applications are taken on stand alone basis, then the interference in the impugned order is not warranted. However, at the same time the contention of the learned counsel for the Petitioner that the applications have been taken out in aid of the application under Order XXXIX Rule 2A also cannot be lost sight of.

4. Ultimately what is sought to be contended by the Petitioner is breach of the orders of the Court. Keeping this in mind, during the hearing of the application under Order XXXIX Rule 2A, if the learned Civil Judge deems it necessary that the information as sought

for needs to be called for and to issue a summons accordingly, the learned Civil Judge can always issue such directions if the adjudication so requires. Therefore, since that stage has not yet arisen and that the applications need not be considered on stand alone basis at present, further directions in this petition are not necessary. The Petition can be disposed of with the clarification that in case learned Civil Judge during the hearing of the application under Order XXXIX Rule 2A finds that the witness summons needs to be issued and certain documents as sought for need to be called, the impugned order will not come in the way of the Civil Judge in exercising its jurisdiction. Whether these documents need to be called for and a witness summons need to be issued, is left to the discretion of the learned Judge to decide, after hearing both the sides. Needless to reiterate that before issuing such directions learned Judge will give opportunity to both the sides.

5. As far as the disposal of the application under Order XXXIX Rule 2A is concerned, since a breach has been alleged by the Petitioner, which fact has been disputed by the Respondents, the learned Civil Judge will consider taking up the application under Order XXXIX Rule 2A, expeditiously.

6. The Writ Petition is accordingly disposed of.

7. It is informed that the proceedings are scheduled before the learned Civil Judge on 3 October 2016. On that date, the learned

Civil Judge will fix a time-table for hearing of the application under Order XXXIX Rule 2A. All contentions on the merits of the controversy are kept open.

(N.M.Jamdar, J.)