

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3600 OF 2016

Vijaynath Baban Pal	...Petitioner
<i>Versus</i>	
M/s. Omex Builders & Contractors	..Respondent

....
Mr. M.H. A. Sayyid, Advocate for the Petitioner.
Ms. Harsha Shah, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.

DATE : 16th APRIL, 2016

P.C.

1. Heard Mr.M.H.A. Sayyid, learned Counsel for the petitioner and Ms.Harsha Shah, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 13.1.2016 passed by the learned Judge, presiding over Court room No.1 of City Civil Court at Dindoshi (Borivali Division) Goregaon below Exhibit-92 in S.C. No.4620/1999. By that order, learned trial Judge rejected the application made by the petitioner, hereinafter referred to as the 'defendant', on

29.9.2015 for exhibiting pages-18 to 66 being part of certified copy of plaint at Exhibit-64 and in the alternatively to issue witness summons to the Registrar of the Court to produce/prove or to depute some competent person to produce the plaint along with Exhibits thereto in L.C.. Suit No.547/2010.

3. Mr. Sayyid strenuously contended that the Court has exhibited the true copy of plaint in Suit No.547/2010. However, annexures from pages-18 to 66 were not exhibited. As the defendant has produced the certified copy of the plaint and annexures as true copies, they are admissible in evidence. He, therefore, submitted that pages from 18 to 66 annexed to the plaint may be exhibited. He submitted that the learned trial Judge rejected the application mainly on the ground that the application made by the defendant for identical relief was rejected in the past and said order was confirmed by this Court. However, learned trial Judge failed to consider the alternate relief claimed in the application. He, therefore, submitted that at least alternative relief claimed in the application Exhibit-92 may be granted.

4. On the other hand, Ms. Shah supported the impugned

order. She submitted that this is the third application made by the defendant for the same relief. On earlier two occasions, the applications were rejected by the trial Court. Aggrieved by one of the orders passed by the trial Court, the defendant preferred Writ Petition in this Court and the same was dismissed. She further submitted that the defendant has prayed in the earlier application marking the documents as Sr.No.11 to 21 as exhibits. In the present application he has prayed as marking pages-18 to 66 of the list of documents of June, 2011 as exhibits. However, same documents are sought to be marked as exhibits.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

6. Perusal of order dated 18.7.2013 passed by learned trial Judge below Exhibit-68 shows that the application filed by the defendant for exhibiting documents from Sr. Nos.11 to 20 was rejected on 4.1.2012. The defendant thereafter filed application Exhibit-68 once again praying for marking the documents at Sr. Nos.11 to 21 of list of document at exhibit-50.

Said application was rejected by the trial Court on 18.7.2013. Aggrieved by that decision, the defendant instituted Writ Petition No.9248/2013 in this Court, which was rejected on 2.12.2013. The defendant did not bring on record any material to indicate that he has challenged the order passed by this Court in that petition. The defendant thereafter filed application Exhibit-92 praying for marking pages-18 to 66 being part of the certified copy of the plaint at Exhibit-64 as exhibits.

7. Ms.Shah submitted that the documents at pages.18 to 66 are nothing but documents at Sr. Nos.11 to 21. Learned trial Judge rejected the application after considering the order passed on 18.7.2013 as also the order passed by this Court in Writ Petition No.928/2013. As the relief claimed in the present application was already rejected on two occasions, I do not find that the learned trial Judge has committed any error in passing the impugned order. Mr. Sayyid submitted that in any case, learned trial Judge ought to have granted alternative relief. In my opinion, grant of such alternative relief will amount to circumventing/nullifying the orders passed by the trial Court and this Court. In view thereof, no case is made out for

invocation of powers under Article 227 of Constitution of India.
Hence petition fails and the same is dismissed.

8. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of Code of Civil Procedure, 1908.

(R. G. KETKAR, J.)

Deshmane (PS)