

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5418/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Rajan P. Joshi for the petitioner
Mr. Yogendra m. Kanchan for the respondent No.1.

CORAM : K. K. TATED, J.
DATE : JULY 18, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner defendant is challenging the order dated 12.03.2015 passed by the Civil Judge, Senior Division Pune, Palghar below Exhibit- 467 in Special Civil Suit No. 72/2001 allowing the respondent plaintiff to place on record the additional documents i.e. excise invoices in respect of the transaction which took place between the plaintiff and defendant. The Trial Court also allowed the plaintiff to lead evidence to that effect. Hence, the Writ Petition.

2. The learned counsel for the defendant submits that the Trial Court, at the fag end of the trial of the suit, allowed the respondent plaintiff's application to place on record additional documents. That is not permissible in law.

3. The learned counsel for the petitioner submits that in the present proceedings, the defendant's Advocate, by his notice dated 16.10.2002 called upon the plaintiff to produce the following documents for inspection as referred to in plaint dated 19.09.2001:

“1. Letter dated 2nd September 2000 alleged to have been addressed by the defendant to the plaintiffs

2. Cheque No.094530 dated 2nd September 2000 alleged to have been drawn in favour of the plaintiff.

3. The delivery challans for the delivery of the goods alleged to have been sold and delivered to the defendant.

4. All the invoices referred to in the schedule to the plaint.

5. The notice dated 20th September 2000 addressed by the Advocate of the plaintiffs to the defendant

6. The postal receipt for receiving the Registered AD and Under Certificate of Posting for posting the Notice dated 20th September 2000 alleged to have addressed to the defendant.

7. The acknowledgment due receipt if any for the delivery of the registered A.D. notice to the defendant

8. *Confirmation, if any, from the postal authorities as to delivery of the Notice sent under Certificate of Posting.*

9. *Orders alleged to have been placed by the defendant."*

He submits that in reply to the said notice, the respondent plaintiff's advocate by his reply dated 18.10.2002 informed the defendant that some of the documents were already filed in criminal case No.538/2000 pending in the court of Judicial Magistrate, F.C., Dahanu.

4. The learned counsel for the defendant submits that in the present proceedings, the plaintiff filed suit on 19.09.2001 and issues were framed on 04.08.2005 and on 28.01.2005 the plaintiff led his evidence on affidavit and thereafter the defendant completed his evidence. He submits that when the matter was kept for arguments, at that time, the plaintiff made application below Exhibit- 467 for allowing them to place on record additional evidence and to examine the concerned witness. He submits that the Apex Court in the matter of ***Bagai Constructiion Vs. Gupta Building Material Store 2013 (14) SCC 1*** held that at the fag end of hearing of the matter, the court should not allow

the parties to lead and/or place on record the additional documents. He submits that in view of the above mentioned facts and the law declared by the apex court in the matter of Bagai Construction (supra), the impugned order is liable to be set aside.

5. On the other hand, the learned counsel for the respondent vehemently opposed the Writ Petition. He submits that the plaintiff filed Special Civil Suit No. 72/2001 in the court of Civil Judge, Senior Division Palghar for recovery of Rs.86,82,902.13 for goods sold and delivered to the defendant. He submits that in the plaint, the plaintiff relied on in all 152 invoices. He submits that in support of those invoices the plaintiff handed over excise invoices to his advocate. But it remained on his part to place on record. He submits that in view of these facts, the plaintiff made application below Exhibit- 467 on 26.02.2014. He submits that in that application in paragraph 4 the plaintiff specifically stated that those documents were lying with their advocate. He relies on paragraph 4 which reads thus:

“4. The plaintiff submits that only the instructions about the documents produced by the plaintiff in the evidence was given to the Advocate of the plaintiff, at the time of filing of the suit and thereafter during the course of the

hearing of the present suit. It was under these circumstances, the documents filed along with the list dated 20.02.2014 were not produced in evidence.”

6. The learned counsel for the respondent submits that because of mistake on the part of an advocate the litigant should not suffer. Therefore, there is no substance in the Writ Petition. Same is liable to be dismissed.

7. Heard both sides at length. There is no dispute that at the fag end of the trial, the plaintiff made application below Exhibit- 467 for production of additional documents in support of his case. It is to be noted that at the time of filing Special Civil Suit No. 72/2001 the plaintiff specifically relied on invoices. In spite of those invoices, the plaintiff wanted to place on record the invoices showing payment of excise duty. Moreover, those documents were handed over by the plaintiff to his advocate but it remained on their part to place on record. Because of mistake on the part of the advocate, a litigant should not suffer. In the matter of Bagi Construction (supra), the Apex Court held that at the fag end of the trial, the court should not allow the parties to place on record new documents in support of their claim. That is not the case in the present matter. The

plaintiff also relied on several invoices and in spite of that they want to place on record the invoices showing the payment of excise duty. These facts were considered by the Trial Court at the time of passing the impugned order.

8. Considering these facts, I do not find any substance in the Writ Petition. Same stands rejected.

9. Ad-interim relief granted earlier stands vacated.

10. At the request of the learned counsel for the petitioner defendant further hearing of the Special Civil Suit No. 72/2001 is stayed for a period of 8 weeks from today.

JUDGE