

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7909/2014

Allabaksh Mohammadsab Shaikh

... Petitioner

V/s.

Sangmeshwar Bandappa Kadadi & Ors.

... Respondents

Mr. A. B. Tajane for the petitioner

CORAM: K.K. TATED, J.
DATED : AUGUST 4, 2016

PC. :

1. Heard the learned counsel for the petitioner. By this petition under Article 227 of the Constitution of India the Petitioner - Power of Attorney holder of plaintiff challenges the order dated 10.03.2014 passed by the 12th Jt. Civil Judge, Junior Division Solapur below Exhibit- 41 and Exhibit- 1 in Regular Darkhast No.75/2011 allowing the plaintiff to withdraw darkhast filed by him for execution of judgment and decree dated 03.10.2006.

2. It is the case of the petitioner that the respondent plaintiff appointed him as a Power of Attorney to conduct Regular Civil Suit No. 460/2006 and also created interest in the suit property. He submits that the plaintiff, without his consent, filed application Exhibit- 41 for withdrawal of the R.D.No.75/2011. He submits that in view of section 202 of the Indian Contract Act, 1872, the respondent plaintiff has no right to withdraw the R.D. without consent of the petitioner because

the respondent plaintiff created interest in favour of the petitioner in respect of the suit property. In support of this contention, he relies on judgment of the Apex Court in ***Southern Roadways Ltd. Madurai Vs. S. M. Krishnan* 1989(4) SCC 603, Barse J. A. Dsouza Vs. Municipal Corporation of Greater Brihan Mumbai and Ors. 2003(6) BCR 846 and Tashi Delek Gaming Solutons Ltd. Vs. State of Karnataka 2005 DGLS (Short Cause Suit) 1066.**

3. The learned counsel for the petitioner submits that by way of Power of Attorney dated 13.01.1994 and 31.05.1994, the respondent plaintiff created interest in the suit property in favor of the petitioner. He submits that the petitioner filed Regular Civil Suit No. 77/2015 for injunction restraining the respondent plaintiff from taking any steps to affect the interest of the petitioner on the basis of the Power of Attorney dated 13.01.1994 and 31.05.1994. He submits that in that suit, the petitioner filed consent terms dated 05.05.2015 and same was accepted by the Trial Court. He submits that these facts were though brought to the notice of the Trial Court, the Trial Court failed and neglected to consider the same and allowed the respondent No.1 plaintiff to withdraw R.D. No.75/2011. He submits that at the time of passing the impugned order dated 10.03.2014, the Trial Court mainly relied on judgment of the Apex Court in ***Deb Ratan Biswas & Ors. Vs. Most. Anand Moyi Devi & Ors. 2011 3 ALLMR 908 (S.C.)***. He submits that the Trial Court failed to consider the fact that the respondent plaintiff created interest in favour of the petitioner by executing Power of Attorney dated 13.01.1994 and 31.05.1994. Hence, impugned order passed by the Trial Court below Exhibit- 41 and 1 in R.D.No.75/2011 is required to be set aside.

4. Heard the learned counsel for the petitioner at length, gone through the copies of Power of Attorney, subsequent suit filed by the petitioner being Regular Civil Suit No. 27/2015 and copy of consent terms. It is to be noted that in the present proceedings the respondent plaintiff made an application below Exhibit- 41 for withdrawal of the Regular Darkhast filed by him. The Trial Court rightly held that though the Power of Attorney is executed in favour of the petitioner, the plaintiff - principal has right to make an appropriate application in the proceedings.

5. The case laws cited by the petitioner as referred to hereinabove are not applicable in the facts and circumstances of the present case. There is no question of claiming any interest by the petitioner on the basis of section 202 of the Indian Contract Act, 1872, on the basis of Power of Attorney dated 13.01.1994 and 31.05.1994. In both these Power of Attorney, nowhere it is stated that respondent No.1 plaintiff created any right, title and interest in favour of the petitioner. The Trial Court passed the impugned order on the basis of the application made by the plaintiff. Hence, I do not find any substance in the Writ Petition.

6. The Writ Petition stands dismissed with cost of Rs.5000/-.

7. Cost to be deposited in the Trial Court within four weeks from today. The respondent plaintiff is entitled to withdraw the same.

(K.K. TATED, J.)