

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

WRIT PETITION NO. 13178 OF 2016

Mohammed Arif Shafeeq Ahmed
Patel

..Petitioner.

Vs

The State of Mahashtra and Ors

.. Respondents

Mr. Mahesh Vishwakarma a/w Ms Harsha Vaid, Mr Satish Chettiyar, Advocates for Petitioner.

Mr. Rohit Joshi , Advocate for Respondents no. 2 to 7.

**CORAM : R.G.KETKAR,J.
DATE : 30/11/2016**

PC:

1. Heard Mr. Mahesh Vishwakarma, learned counsel for the petitioner and Mr.Rohit Joshi, learned counsel for respondents no. 2 to 7 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged order dated 8.9.2016 passed by the learned trial Judge below Exhibit-161 in Spl. Civil Suit No.180 of 2008. By that order, the learned trial Judge rejected the application made by the plaintiff for issuing witness summons to Tajammmul Hasan Mukri, who is a witness to the agreement dated 8.3.2005.

3. As respondent no.1 -State of Maharashtra is a formal party, notice to respondent no.1 is dispensed with. Rule. Mr Joshi waives service on behalf of respondents no. 2 to 7. In view of the narrow

controversy and by consent of the learned counsel appearing for the parties, rule is made returnable forthwith and petition is taken up for final disposal.

4. In support of this petition, Mr. Vishwakarma invited my attention to paragraphs 3 and 7 of the written statement filed on behalf of defendants no.1 to 4. In paragraph 3, the defendants admitted that the plaintiff has paid Rs. 1 lakh by cheque drawn on IDBI Bank in the name of defendant no.1 on 14.10.2003 and Rs. 9 lakhs in cash. In paragraph 7, the defendants denied that the plaintiff has paid Rs. 19 lakhs as a consideration for the suit plot.

5. Mr. Vishwakarma submitted that while rejecting the application the learned trial Judge observed that the plaintiff wants to call Tajammul Mukri in order to prove the suit agreement. The suit agreement is already admitted by the defendants and the same has been proved as admission dispensed with formal proof of the document. Hence, witness need not be called. He submitted that in order to substantiate payment of entire consideration, it is necessary to examine the said witness.

6. On the other hand, Mr Joshi supported the impugned order and submitted that this is nothing but delaying tactics on the part of the plaintiff. The plaintiff has secured interim injunction and therefore this is one more attempt to delay the trial. He

submitted that in any case if the court is inclined to permit the plaintiff to examine witness Mukri, the same may be restricted only in respect of proving payment of consideration and also his evidence may be recorded in a time bound manner.

7. Mr. Vishwakarma assures that the plaintiff will ensure presence of witness on 15.12.2016 and will not seek undue adjournment for examining the said witness. Learned counsel for the parties assure that they will extend full cooperation for completing recording of evidence.

8. In view thereof, Impugned order is modified so as to permit the plaintiff to examine witness Tajammul Hasan Mukri only for establishing payment of consideration.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

10. Parties to act on the authenticated copy of this order.

(R.G.KETKAR, J.)