

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

WRIT PETITION NO.10208 OF 2014

Smita Sah & Anr.

.. Petitioners

vs.

Titan Industries Ltd.

.. Respondent

Mr.Sarosh Barucha with Ms.Krishna Barucha i/b M/s.Legasis Partners
for the petitioner

Mr.G.R.Joshi, Sr.Counsel with Mr.Aniruddha Joshi i/b M/s.Mulla and
Mulla and Craigie Blunt and Caroe for the respondent no.10

CORAM : K. K. TATED, J.

DATE : JULY 11, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the
Petitioner defendant challenges the order dated 23.6.2014 passed by
Bombay City Civil Court, Mumbai in Chamber Summons No.1425 of
2011 in Short Cause Suit No. 5468 of 2007 dismissing the defendant's
Notice of Motion by which defendant prayed that plaintiff be directed
to give inspection of the following documents (i) Insurance policy for
Burglary for the years 1987 to 4.9.2006; (ii) Insurance policies for
theft, fire, transit delivery etc. for the years 1987 to 4.9.2006 (iii)
Fidelity Insurance Policy for the years 1987 to 4.9.2006; (iv) Names of

employees of Defendant No.2 who were covered in the Fidelity Policy; (v) the aforesaid documents for both the CFS's located at Kapoor Mansion and Malad, as per Order 11 Rule 12 of the Civil Procedure Code, 1908.

3 The learned counsel for the defendant submits that at the time of passing impugned order, Trial Court failed to consider the provisions of Order XI Rule 21 of the Code of Civil Procedure, 1908. He submits that even the Trial Court has not considered the judgment of the Apex Court in the matter of *Shri M.L.Sethi vs. Shri R.P.Kapur, (1972) (2) SCC 427*. He submits that Trial Court mostly relied on the Affidavit-in-Reply filed on behalf of plaintiff as well as order passed by this court dated 17.1.2012 in Notice of Motion No.1081 of 2012. Hence, impugned order passed by Trial Court is required to be set aside and Notice of Motion be made absolute in terms of prayer clause (b).

4 Heard the learned counsel for the parties.

5 In the present proceeding, respondent plaintiff filed their Affidavit-in-Reply to the Chamber Summons No.1425 of 2011 dated 14.10.2011. In paragraph 3 of the said Affidavit-in-Reply plaintiff specifically stated that documents as referred in prayer clause (b) of the Chamber Summons are not available with them. Paragraph 3 of the said reply reads thus:

“3. At the outset, it is submitted that the Chamber Summons as filed with the relief claimed therein is not maintainable and ought to be summarily dismissed. It is

submitted that there is no order directing grant of inspection of any documents (particularly the documents, inspection of which is now sought) and hence the question of dismissal of the suit does not arise. In any event, the Plaintiffs are not relying upon the documents, inspection of which is allegedly sought and not given. Furthermore, as communicated by the New India Assurance Co.Ltd. by letter dated 30th September, 2011, the documents are not available with it. These documents are also not available with the Plaintiffs. On this ground alone the Chamber Summons is not maintainable and is liable to be dismissed. The Chamber Summons taken out by the Defendants is false, frivolous, vexatious and is filed with a malafide intention.”

6 Plaintiff further stated in the said reply that they already provided inspection of the documents which were available to them. To that effect, he made a statement in paragraph 9 of the said Affidavit-in-Reply which reads thus:

“9. Without prejudice to the Plaintiff's rights and contentions and in order to obviate false allegations, copies of the policies available with the Plaintiff in its records were duly furnished to the Defendants. The Plaintiff by their letter dated 28th September, 2006 recorded the aforesaid fact. A copy of the said letter is annexed as Exhibit “G” to the Plaint.”

7 Considering the impugned order passed by Trial Court as well as Affidavit-in-Reply filed by plaintiff, it is very difficult to accept the submission made by the learned counsel for the defendant that though plaintiff specifically made a statement on solemn affirmation on affidavit they do not have those documents, the court ought to have passed order against them to file affidavit of documents and or to give

inspection. These facts are considered by the Trial Court in the impugned order. Hence, I do not find any substance in the present Writ Petition.

8 Hence, Writ Petition stands rejected.

JUDGE