

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1972 OF 2017

- 1) Shramsafala Education Society
Chopda Road, Near Devali Phata,
Amalner Tq. Amalner
Dist. Jalgaon.
 - 2) The Chairman,
Shri Subhash Dodhu Bhandarkar,
Age 71 years, occupation Agriculture,
Shramsafalya Education Society
Ramai Physical Education College
Dhule Road, Amalner Tq. Amalner
Dist. Jalgaon.
 - 3) The Secretary,
Sau. Gita Subhash Bhadarkar,
Age 69 years, Occupation Household,
Shramsafalya Education Society
R/o Gayatri Colony, Behind
JDCC Bank, Dhule Road,
Amalner Tq. Amalner
Dist. Jalgaon.
- .. Petitioners

VS.

- 1) Chandrakant Bhanudas Bhadane,
Age 47 years, Occupation Agriculture,
R/o Samarth Nagar, Market Yard,
Amalner Tq. Amalner,
Dist. Jalgaon.
- 2) The In Charge Principal
Ramai Physical Education College,
Amalner Tq. Amalner,
Dist. Jalgaon.

- 3) Shri Vivekanand Laxman Bhadarkar,
Age 47 years, Occupation Business,
R/o Japan Jeen Compound, Vipra
Road, Amalner, Tq. Amalner,
Dist. Jalgaon.
- 4) Shri Rman Devisinha Patil,
Age 68 years, Occupation Retired,
R/o Adjacent to School No.6,
Amalner, Tq. Amalner,
Dist. Jalgaon.
- 5) Dilipsingh Ajabsingh Patil,
Age 47 years, Occupation Agriculture,
R/o At Post Bhorteek Tq. Amalner,
Dist. Jalgaon.
- 6) Shri Arjun Ambadas Khadake,
Age 51 years, Occupation Service,
R/o In front of M.J. College,
Chanakya Apartment, Jalgaon,
Tq. and Dist. Jalgaon. .. Respondents

Mr. A. G. Talhar, Advocate for the petitioners.
Mr. Girish Rahe, Advocate for respondent No.1.

CORAM : SMT. VIBHA KANKANWADI. J.
DATE : 28-11-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. With consent of both the parties, matter is taken up for final hearing at the admission stage.

2. As per the order of this Court dated 16th February 2017 such notice for final disposal was given.

3. The original defendants No.1, 2 and 4 have challenged the order below Exh.114 passed by Civil Judge, Senior Division in Special Civil Suit No.72 of 2011.

4. The factual matrix leading to the petition are that, the respondent No.1, who is the original plaintiff, has filed the said suit for the recovery of amount of Rs.20,76,010/-. By earlier round of litigation which was before this Court in respect of production of documents, an order came to be passed while disposing of the Writ Petition No.6486 of 2015 on 09-09-2015. However, by way of Civil Application No.12856 of 2015 in the said writ petition further orders have been passed. In fact, the original plaintiff had called upon the defendants to produce certain documents from **1996 to 2008**. It has been decided in the said civil application taking into consideration submission made on behalf of the present petitioners that, they should comply with and produce the documents which are in their possession from July 1996 to 2008. Petitioners contended that they do not possess documents for the period between 1990 to July 1996. It was directed

that the said point should be decided by the concerned Court. In pursuance to the said order certain documents have been placed alongwith Exh.109, before the concerned Court. Thereafter, an order came to be passed on 19-04-2016 by the learned trial court that the production of those documents is not inconsonance with the order passed by this Court on 09-09-2015. However, it appears that, even at that stage, the learned trial court had not taken note of the order passed by this Court on 09-10-2015 i.e. in the civil application. It has been observed that, there is only partial compliance. This order is not under challenge in this petition, and therefore, I would refrain myself from making any kind of observations, however the order that is under challenge here is, order below Exh.114. By the application at Exh.114, the present petitioners had prayed that, they have produced original documents along with Exh.109 but they require the original proceeding books and other documents for their daily needs, and therefore, it was prayed that they should be verified by the Court or any officer of the court and after verification of the original with the true copies thereof. The original be returned to them.

5. Say of the respondent No.1 has been called. The say is mainly on the point that there is no compliance of the order of this

Court by the defendants. After hearing both sides, the learned Trial Court has held that, the suit involves the recovery of dues of the plaintiff's salary, and therefore, before considering prayer of defendants, to get verified copies of the proceeding books, from the original, they were called upon to obey the order of this Court. The learned Trial Court went on further and observed that, in case defendants failed to comply with the said order till next date, it will be treated as their willful fault and breach of the order of the Court to be followed by consequent suitable orders. This order is under challenge in this petition.

6. The learned counsel appearing for the petitioners has taken me through the record and submitted that, as regards the documents for the period from 1990 to 1996, this Court had directed that the said point should be decided by the learned Trial Court. It was submitted before this Court that, the present petitioners are not in possession of those documents, therefore unless the said point of possession and thereupon asking them to produce those documents is adjudicated, there cannot be a compliance. Further as regards the documents for the period from 1996-2008 is concerned, according to the petitioners those documents have been produced on record along

with application exh.109. Since those documents were the original documents and they were required by the defendants for their daily routine, they had prayed for the verification and return of the original. He also submitted that, without deciding the point which as per the orders of this Court was required to be decided by the Trial Court, the Trial Court ought not to have ask the defendants to comply with the order.

7. Per contra, it has been submitted by the learned counsel appearing for the respondent No.1 that, he has pointed out as to what is the shortcoming in the documents in respect of those documents along with Exh.109. Further he conceded the fact that as regards the possession of documents for the period from 1990 to 1996 is concerned, the concerned Trial Court has been directed by this Court to decide the issue. However, as regards the documents for the period 1996 to 2008 are concerned, all the documents have not been produced by the defendants, which they are duty bound.

8. It is to be noted that, the application Exh.114 was given with a limited prayer. It was specifically stated that, certain documents have been produced along with Exh.109 with true copies, however original are required for the day today affairs of the

defendants, and therefore, a request was made that a verification should be done in respect of the true copies with the original and the original be returned. In fact it was within the prerogative or discretionary power of the concerned Trial Court to allow the said application without calling for the say of the other side. The point whether there is full compliance of the order of this Court or partial compliance, was not at all involved in application Exh.114. At the most, it was the part of Exh.109. While considering application Exh.109, it has been observed by the Trial Court that, the said production of documents is not in consonance with the order of this Court. The parties were at liberty to have their grievances redressed in respect of the order passed below Exh.109. Again limiting to the issue that is involved in this writ petition which is in respect of order below Exh.114, it is to be noted that, it was in the interest of the parties to get the verification done and return the original because, (1) the originals were required by the defendants for their daily routine work, (2) in order to avoid loss or tampering, and the purpose can be said to be served by verification. The said application ought to have been allowed by the Trial Court. If at all the plaintiff intended to have look at the original proceedings, he can ask for the inspection of the documents, and with such precautions, the application could have

been disposed of. However, the learned Trial Court it appears that, unnecessarily mingled with the various prayers and aspects. The delay in the disposal of the suit could have been avoided, so also multiplicity of litigation if the said application Ex.114 would have been allowed.

9. Taking into consideration the fact that, the original can be returned to the defendants after verification of the same with the true copies, the petition deserves to be allowed. However, at this stage I would like to observe that as regards the points, (1) Whether there is compliance of the order passed by this Court earlier in Civil Application No.12856 of 2015, and (2) In respect of observations regarding documents for the period between 1990 till July 1996 is concerned, they are yet to be adjudicated or are subject to be decided by the Trial Court. With these observations, I proceed to pass following order.

ORDER

- 1) The petition is hereby allowed.
- 2) The order passed by Civil Judge, Senior Division, Amalner, in Special Civil Suit No.72 of 2011 below Exh.114 is hereby set aside.

3) The Trial Court or any responsible officer of the Court deputed for this purpose should verify the original documents produced along with Exh.109 with the true copies thereof produced by the defendants and return the same to the defendants.

4) It is made clear that, in view of observations in the paragraph No.9, the learned Trial Court is at liberty to decide those points.

5) Petition is hereby disposed of with no order as to costs.

**[SMT. VIBHA KANKANWADI]
JUDGE**

vjg/-.