

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9770 OF 2017

MAHESH BABAN GAIKWAD
VERSUS
THE MANAGER, PRABHAT DAIRY PRIVATE LIMITED,
AHMEDNAGAR

Advocate for Petitioner : Shri A.G. Ambetkar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 08th August, 2017

PER COURT :

1. The petitioner is aggrieved by the order dated 03/07/2017, by which, application Exhibit 20 seeking production of documents under Order XI Rule 16 of the Code of Civil Procedure, has been rejected.

2. Issue before the Trial Court is about recovery of unpaid bills.

3. Learned counsel for the petitioner submits on instructions that the original receipts are with the respondent for the period 11/05/2014 to 05/06/2015. The record reveals that it is only

the office copies that are with the respondents since, the original receipts are given to the petitioners. Now the petitioner submits that the originals are produced before the Court but there are no signatures of the signing authority of the respondent.

4. It is trite law that while dealing with an application seeking directions to the other sides to produce documents under Order XI Rule 16 of C.P.C., it has to be seen, as to whether such documents are in existence and then, it has to be assessed whether the other side has the exclusive custody of such documents. The issue of exclusive custody of documents is vital. If a party demanding the documents, has the valued copies of the said documents in its custody, it is expected that the said party could first file the said documents.

5. Exhibit 20 is solely based on the impression of the petitioner that the original bills are with the respondent. It is obvious that after the petitioner has sold milk to the respondent, original receipts have been issued and which need

to be filed. Exhibit 20 proceeds on the premises that the originals are with the respondent and this aspect has been disproved.

6. In so far as the demand for the income tax returns and balance sheet is concerned, I do not find that it would have any relevance to the alleged claim of the plaintiff that the respondent has not paid the price of the milk sold for the period 11/05/2015 to 05/06/2015.

7. Similarly, the details about how much milk was supplied to the respondent/Dairy during the period 11/05/2015 to 05/06/2015 is concerned, the said details are also not necessary.

8. Considering the above, if the original receipts are with the petitioner and if they have not been filed, the petitioner can very well file the said bills and can prove the documents by leading evidence as is provided under the Evidence Act.

9. Considering the above, I do not find that the impugned order could be termed as perverse or erroneous. This petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.