

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11726 OF 2017
(Shri Sant Nagebaba Multistate Urban Credit Society Ltd.,
Ahmednagar Vs. Renukadas Laxmanrao Gholap and others)

Mr.S.S.Kotkar, Advocate for the petitioner.
Mr.D.R.Jayabhar, Advocate for respondent Nos.1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/10/2017

PER COURT :

1. The petitioner/plaintiff is aggrieved by the order dated 05/08/2017 by which the Trial Court has rejected application Exh.128.

2, I have considered the submissions of the learned Advocates for the respective sides. Learned Advocate for the petitioner prays to delete respondent No.4 as no reliefs are sought against the said respondent. Deletion is permitted at the risk of the petitioner. Deletion be carried out forthwith.

3. Considering the submissions of the learned Advocates and the record available, it appears that when the petitioner/plaintiff had commenced the cross examination of the defendant, an application

Exh.128 was tendered praying for leave to produce a document regarding the loan transaction. Learned Advocate for the petitioner categorically states that the said document was in original form.

4. I am dealing with this petition and passing this order on the statement that the document which was sought to be tendered was in original form. The Trial Court rejected Exh.128 on the ground that though the document was in the possession of the plaintiff, he has not filed it earlier and has suddenly tried to produce it when the cross examination had commenced.

5. It cannot be ignored that the pending suit is filed by the petitioner/society for the recovery of Rs.50,00,000/- paid to defendant No.1. Agreement to sale was executed with regard to the advance amount and hence the relief sought was for seeking the specific performance of the contract.

6. I find that the loan agreement would be a decisive document, though it cannot be overlooked that the plaintiff could have filed it earlier. Nevertheless, it was not too late to permit the filing of the document since the refusal to file the document would lead to a trial in the absence of a document which is the basis of the claim of the

plaintiff.

7. Considering the above and in order to avoid multiplicity of litigation, this petition is allowed. The impugned order dated 05/08/2017 is quashed and set aside. Application Exh.128 is allowed on the following two conditions :-

[a] The petitioner/plaintiff shall deposit an amount of Rs.7,000/- before the Trial Court as costs to be paid to defendant No.1, who was under cross examination. The said costs would be withdrawn by him without conditions.

[b] In the event, defendant No.1 desires to have a re-examination in the peculiar facts and circumstances of the case with reference to the said document which would be filed by the plaintiff, he would prefer an application to that effect and the Trial Court would consider the said application on its own merits.

(Ravindra V.Ghuge, J.)