

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11052 OF 2016

Dnyaneshwar s/o Deepchand Jogi,
Age: 31 years, Occu: Agri.,
R/o : Sulwadi, Tq. Raver,
Dist. Jalgaon

..PETITIONER

VERSUS

Sanjay s/o Trayambak Kulkarni,
Age: 52 years, Occu: Stamp vender & Agri.,
R/o: Aainpur, Tq. Raver, Dist. Jalgaon

..RESPONDENT

Mr M. G. Patil, Advocate for petitioner;
Mr Amit S. Savale, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 25th September, 2017

ORAL ORDER

Mr Patil, learned Counsel appearing on behalf of petitioner, while questioning the order dated 26th July, 2016, passed below Exh.51 in Special Civil Suit No.181 of 2014, pending on the file of learned Civil Judge Senior Division, Bhusawal, would urge that since the document in question was executed before the Sub-Registrar, he is a necessary witness to the suit and as such, the Court has committed an error in rejecting the prayer for summoning the said witness.

2. Placing reliance upon the provisions of Sections 91 and 92 of the Indian Evidence Act, 1872 and upon Division Bench's judgment of Gujarat High Court in the matter of **State Bank of India Vs. M/s. Premco Saw**

(2)

Mill, Ahmedabad & ors., reported in **AIR 1984 Gujarat 93**, he submits that the contents of the document viz. of contract can be proved by oral evidence. According to him, even if there is legal contract, the exception carved out under Section 92 of the Evidence Act is not applicable to the present case.

3. Per contra, learned Counsel appearing on behalf of the respondent would urge that the prayer made in the plaint clearly meets the provisions of Section 92 of the Evidence Act as the contract in question is based on written document and as such, Section 91 of the Evidence Act will govern the issue between the parties.

4. Considered the rival submissions.

5. Having regard to the controversy involved in the suit, prompts this Court though the application moved below Exh.51 for summoning the Sub-Registrar, is wholly mis-conceived as the said witness was never party to the contract in question, about receipt of the consideration, if any.

6. The document is required to be proved by the parties pursuant to the provisions of Section 91, to which parties have already taken recourse to. Section 92 carved out an exception to Section 91 and in such eventuality, since if the parties have acted in terms of Section 91 of the Evidence Act, the claim of the petitioner for summoning the Sub-Registrar was rightly rejected by the Court below.

(3)

7. In the light of observations made at paragraph No. 12 of the judgment in the matter of State Bank of India (cited supra), consideration for a contract cannot be said to be a condition of the contract and, therefore recital of the contract in the present case, cannot be subject matter of confrontation to Sub-Registrar, who is sought to be summoned.

8. In this view of the matter, I hardly notice any illegality. Writ Petition, as such, fails and same stands rejected.

(NITIN W. SAMBRE, J.)

sjk