

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

WRIT PETITION NO. 13731 OF 2017

DILIP GANPATRAO BHARITKAR AND ANOTHER
VERSUS
M/S. SAISHRADDHA DEVELOPERS SANGAMNER
THROUGH IT'S PARTNER SUNIL BANSILAL RATHI AND
OTHERS.

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Advocate for Petitioners : Mr Wani Girish V.
Advocate for Respondents : Mr Bajaj Anil S.

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CORAM : V.K. JADHAV, J.

Dated: December 04, 2017

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PER COURT :-

1. Aggrieved by the order dated 7.9.2017 passed by the 2nd Jt. Civil Judge, S.D., Sangamner, the petitioners/original defendants approached to this Court by filing present writ petition.

2. Brief facts, giving rise to the present writ petition, are as follows :-

a] The respondents/original plaintiffs have filed an application exh.212 contending therein that they have paid certain amount to the deceased father of defendant

no.1 by cheque/draft as detailed in the plaint and so far as the amount out of consideration amount of Rs.20.00 lacs is concerned, that has been paid through demand draft to the deceased father of petitioners/defendants and said demand draft has been deposited by the father of petitioners in their joint account in I.C.I.C.I. Bank, branch Gulmohar Park, Pune. Respondents/plaintiffs have filed an application exh.212 for examination of the Branch Manager to substantiate the said contention. Said application came to be strongly resisted by the petitioners herein. The learned 2nd Jt. Civil Judge S.D., Sangamner, by its impugned order dated 7.9.2017 allowed the application and issued witness summons to I.C.I.C.I. Bank Gulmohar Park, Pune for production of statement of account and for evidence. Hence, this writ petition.

3. Learned counsel for the petitioners/original defendants submits that, after evidence closed by both the sides, respondents/plaintiffs have filed said application Exh.212. Learned counsel submits that,

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aforesaid fact of depositing the demand draft in the joint account maintained by deceased father of petitioners/defendants was well within the knowledge of the petitioners/defendants and there is no explanation at all as to why application exh.212 came to be submitted at such belated stage.

4. Learned counsel for respondents/original plaintiffs submits that, respondents/plaintiffs have filed an application Exh.205 for directions to the petitioners/original defendants for production of extract of the joint account of deceased Ganpat and petitioners/original defendants no.1 and 2, however, defendant no.2 has filed the letter of the bank on record, wherein it is informed that the account is not in operation and therefore, statement of the account as desired cannot be supplied. Learned counsel submits that, the respondents/plaintiffs have given Rs.20.00 lacs by demand draft out of the consideration amount of the transaction and said demand draft came to be deposited in the aforesaid account by deceased father of

defendant nos. 1 to 4. Learned counsel submits that, no prejudice likely to be caused to the petitioners/defendants in any manner. Trial court has, thus, rightly allowed the said application exh.212. No interference is required in the impugned order.

5. It appears from the impugned order most particularly paragraph no.5 that on previous occasion, respondents/plaintiffs have filed an application exh.205 for production of the extract of said ICICI Bank account. Even though, said application came to be allowed by the trial court, the petitioners/defendants sought excuses on one or another pretext to produce said extract before the court. It further appears that defendant no.2 has produced bank letter dated 4.7.2011 on record wherein it has been mentioned that said account is inactive and thus statement of the account as desired could not be provided. The learned Judge of the trial court has rightly observed that account could have been activated by one cash credit entry and even though directions have been given to respondent no.2 to produce said

statement of account, the defendant no.2 has not complied with the directions given by the court.

6. It appears from the contents of the agreement that consideration amount is of Rs.71 lacs and out of that respondents/plaintiffs have paid Rs. 61.00 lacs by way of various cheques and demand drafts. It further appears that out of said amount, Rs.20.00 lacs have been given to the deceased father of defendant nos.1 to 4 by demand draft of HDFC Bank dated 9.6.2005. It is also a part of record that deceased father of defendant nos. 1 to 4 have deposited said demand draft in his joint account maintained in ICICI Bank, Gulmohar Park branch, Pune and said fact is well within knowledge of the petitioners/defendants. Defendants have not denied that they have joint account in the said bank.

7. I do not find any fault in the impugned order passed by the trial court. Trial court has rightly allowed the application exh.212. No interference is required. There is no substance in the writ petition. Writ Petition

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is hereby dismissed. In the circumstances there shall be no order as to costs.

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(V.K. JADHAV, J.)

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