

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3106 OF 2010

Hemant Gulabchand PorwalPetitioner
Vs.
Anil Kondiba Jadhav and Ors.Respondents

Mr. Pratap Patil for Petitioner
Mr. K.K. Waghmare for Respondent Nos.1 to 3
Mr. T.D. Deshmukh for Respondent No.6(b) and 6 (c)

CORAM: M.S.SANKLECHA, J.
DATE : 6th SEPTEMBER, 2017.

P.C:-

1. At the request of the learned counsel for the parties, the petition itself is being finally disposed of at the stage of admission.
2. This petition under Article 227 of the Constitution of India challenges two orders, both dated 22nd February, 2010 passed below Exhibit 94 and Exhibit 97 by the Joint Civil Judge, Senior Division, Pune.
3. Respondent Nos. 1 to 3 had filed a Special Civil Suit No. 515 of 2015 seeking to recover an amount of Rs.12.64 lakhs from Respondent Nos. 4 to 6 and the Petitioner. After the Examination -in-Chief as well as the cross of Respondent Nos. 1 to 3 as well as the evidence of the Petitioner and his cross examination was over, the Petitioner (Original Defendant No.4) sought to produce Income Tax Returns of Respondent No.4 – (Original Defendant No.1) for the Assessment Year 2001-2002 as

Exhibit 94.. The application for producing these further documents points out that the Income Tax Returns filed by Respondent No.4 (Defendant No.1) came to the knowledge of the Petitioner when a box file containing various papers of Respondent No. 4 herein was handed over to the Petitioner by a subsequent lessee of the premises, which was earlier given on license to Respondent No.4. Thus, the delay in producing the Income Tax Returns.

4. The impugned order rejects the same on the ground that in law by virtue of Order 8 Rule 1A of the Civil Procedure Code, 1908 (Code), it is mandatory on the part of the Petitioner (Original Defendant) to produce documents being relied upon by him when the written statement is filed. Further, the impugned order records that the reasons given in the application to produce the additional documents are not convincing. Thus rejects the application.

5. I find that the impugned order proceeds on a complete misunderstanding of the correct position in law that the Defendant is prohibited from producing any documents after filing of the written statement even when the documents came to his knowledge post the filing of a written statement. This is in complete disregard of Order 8 Rule 1A (iii) of the Code which clearly provides that with a leave of Court, the additional documents on behalf of Defendants could be received in evidence at the hearing of the suit.

6. The impugned order does not set out even briefly as to why the reasons set out in the application filed by the Petitioner is not convincing. Merely stating that the reasons are not convincing do not meet the sine qua non of any judicial order i.e. order supported by reasons. A judicial order has to necessarily deal with the submission made by a party and the

reasons for not accepting the submissions of the party.

7. In the above view, the impugned order dated 22nd February, 2010 passed below Exhibit 94 being unsustainable is quashed and set aside. However, the application is restored to the Joint Civil Judge, Junior Division, Pune for passing a fresh order after considering the reasons given by the Petitioner for delay in filing the additional documents. So far as the impugned order dated 22nd February, 2010 passed below Exhibit 97 is concerned, it is an agreed position between the parties that it is a consequential order to the order dated 22nd February, 2010 below Exhibit 94.

8. The impugned order below Exhibit 97 rejects Petitioner's application to file additional affidavit of evidence in view of the impugned order dated 22nd February, 2010 passed below Exhibit 94. Therefore, impugned order dated 22nd February, 2010 passed below 97 is also quashed and set aside. The Application under Exhibit '97' is to be considered by the Trial Court along with the application under Exhibit '94' i.e. producing of additional evidence

9. In the above view, petition is allowed and disposed of in the above terms. No order as to costs.

Sd/-
(M.S.SANKLECHA,J.)