

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8179 OF 2017

Goel Ganga Developers India Pvt.Ltd.

...Petitioner

Versus

Nancy Builders & Developers Pvt. Ltd. & Anr.

...Respondents

.....

Mr.Surel S.Shah for the Petitioner.

Mr.Sanjay Jain a/w. Mr.Sheelang Shah and Ms. Koshiki i/b. LJ Law.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 20, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 07.07.2017 passed by the learned 2nd Jt. Civil Judge, Senior Division, Pune below Exhibit 178 in Special Civil Suit No. 170 of 2014

3. Respondent no.1/plaintiff had filed the Suit for specific performance. In the said Suit, interim relief was granted and as per the case of the plaintiff, the petitioner/defendant has committed breach of the order passed by the trial Court and therefore, he filed an application

under Order 39 Rules 2 (a) and 11 of the Code of Civil Procedure. During the enquiry of the said application, the plaintiff moved the application below Exhibit 178 for issuing witness summons to two persons i.e. Mr. Amt Goel, Director of defendant no.1 and Mr. Shirish Naik, Assistant General Manager, State Bank of India, Industrial Finance Branch, Pune, requesting that these two persons are to be called as witnesses alongwith the documents mentioned in the application below Exhibit 178. The said application was opposed by the petitioner/defendant. However, the learned Judge has partly allowed the application. The learned Judge has directed to issue witness summons to Mr. Shirish Naik, Bank person with direction to bring the documents as mentioned in the application. The learned Judge did not issue the summons to the Director of defendant no.1, but kept that order in abeyance. Hence, it is made clear that the order cannot be challenged and therefore, that order is not challenged by defendant as on today.

4. The learned counsel for the petitioner submits that in the application respondent no.1/plaintiff gave the gist of the evidence, which he wants to take on record. No proper reasons are mentioned for calling the witnesses. The application is vague. The learned Judge ought not to have issued the witness summons to Mr. Shirish Naik, who is altogether unconnected person and his evidence is irrelevant to the

issue and also ought not to have directed the defendant to produce the documents. He further submits that the learned Judge while issuing witness summons to some Bank personnel has given weightage to the pursis filed by the respondent/plaintiff wherein he has mentioned that the trial Court allows the application below Exhibit 178 for issuing witness summons, the plaintiff will not examine himself or any other witness for himself. In support of his submission, he relied on the judgment of ***Kokkanda B. Poondacha & Ors. Versus K.D.Ganapathi & Anr.***, reported in **(2011) 12 SCC 600** and further relied on the judgment of ***Mange Ram Versus Brij Mohan and Ors.***, reported in **(1983) 4 SCC 36**.

5. The learned counsel for the respondent while opposing this petition has argued that the case of the respondents against the petitioner is that they have tried to give up the mortgage, which is contempt of the Court, in view of Order 39 Rule 2(a) of C.P.C. He submits that the respondents want to examine the Bank personnel to find out that he has issued these three letters, which are mentioned in the application, with or without authority and therefore, for this purpose, the examination of Mr. Shirish Naik is necessary.

6. Perused the impugned order and also judgments relied by the learned counsel for the petitioner. The Supreme Court has dealt with the issue of Order 16 Rules 1 and 2 of the Code of Civil Procedure and has laid down the procedure is to be followed by the trial Court while entertaining the application under Order 16 Rules 1 and 2 and taking the steps therein. The Suit is for specific performance. In the present case, there is an issue of breach of interim order passed by the trial Court. It is the case of respondent no.1/plaintiff that by giving up the mortgage, the petitioner/defendant has tried to breach interim order, where the interest of respondent no.1/ plaintiff is protected by passing interim order by the trial Court. It is necessary for the plaintiff to prove the said fact and therefore, the witness summons to the bank personnel is asked for. The learned Judge has rightly corrected the reasons and has allowed the application for witness summons to the Bank personnel and directed the defendant to produce the documents and has not passed any order in respect of issuing witness summons to the Director of defendant. The said application is also kept in abeyance. After considering the evidence, the trial Court may or may not issue the witness summons to the Director of the petitioner.

7. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)