

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 372 OF 2017

Satyappa Tamanna Kambale	... Petitioner
Vs.	
Sou. Jaywanta Bajirao Pawar	... Respondent

Mr. Amitkumar D. Sale, Advocate for the petitioner.
Mr. Anilkumar K. Patil, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 27th June, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 15th September, 2016 passed by the learned Civil Judge Junior Division, Jath below Exhibit 104 in Regular Civil Suit No. 48 of 2012 thereby rejecting to exhibit an Agreement between the plaintiff/petitioner and defendant/respondent for which the suit for specific performance is filed. The execution of Agreement dated 14th June, 1996, which is the basis of the suit for specific performance, is disputed by the defendant/respondent before this Court. One Siddappa Komaji is produced as witness for the plaintiff/petitioner on the point of

execution of the said Agreement. Affidavit-in-chief was filed on 18th September, 2014, which was taken on record. However, in the chief, the said document should have been actually shown to the witness though there is mention in the affidavit-in-chief that he has seen the original agreement and he has identified his thumb impression on the said agreement. However, the said Agreement was not actually shown to the witness before the Court and moreover, the said agreement was not exhibited at the end of chief. Immediately, cross-examination was conducted and it was concluded on 22nd September, 2014. In the cross-examination, the execution of the said agreement and his status as witness to the said agreement was denied by putting specific questions to that effect. The learned counsel for the plaintiff/petitioner thereafter realized and in December, 2015, he moved an application for exhibiting the said agreement. The said Application was challenged by the defendants and thereafter the Court rejected the same.

3. Heard the submissions of the learned counsel for both the sides. Perused the impugned order dated 15th September, 2016. It appears that the learned Judge has given correct reasons for not exhibiting the said document. However, the learned Judge ought to

have gone further and after directing the plaintiff/petitioner to comply with certain evidential requirements, should have exhibited the said agreement, which is the basis of the suit. If the document is not exhibited, the plaintiff will be non-suited at threshold. This cannot be done at this stage, as the plaintiff has produced the witness to prove the said agreement. In fact, the learned Judge of the trial Court at the time of recording of examination-in-chief should have taken initiative and should have asked the counsel of the plaintiff to put the witness in the box to show that document to the plaintiff and could have rectified.

4. Be that as it may, the Writ Petition is allowed on following terms:

- (i) The order dated 15th September, 2016 passed by the learned Civil Judge Junior Division, Jath is hereby set aside;
- (ii) Parties are directed to appear before the trial Court on 10th July, 2017 at 11.00 a.m.
- (iii) The plaintiff shall remain present along with the witness on 10th July, 2017 ;
- (iv) The trial Court to put the witness in the box only for the

limited purpose to show the impugned agreement to the witness and thereafter the respondent/original defendant be allowed to cross-examine the witness on the point of execution;

- (v) Rule is made absolute in above terms.

(MRIDULA BHATKAR, J.)