

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7744 OF 2018

Gopal Kashinath Chaudhari

..Petitioner

VERSUS

Kadu Baliram Mahajan

..Respondent

Mr. M.M. Bhokarikar, Advocate for Petitioner.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 31st July, 2018

PER COURT

1. This writ petition has been preferred against order dated 09-08-2017 on application Exh.63 in Regular Civil Suit No. 24 of 2016 pending before the learned Civil Judge Junior Division, Raver.

2. Application Exh.63 has been moved by present petitioner-defendant for sending the matter to District Deputy Registrar and Registrar Money Lending since, the petitioner claims, the transaction to be hit by The Maharashtra Money Lending (Regulation Act 2014 and Rules) and to stay the proceedings till the report is received from the said authority.

3. The trial Court has referred to that issue is framed in the suit, as to whether this agreement of sale executed by defendant is nominal or by way of security of loan taken by the plaintiff from the defendant and the same is not to determine the nature of the transaction between the parties, whether it is a money lending transaction. The trial Court has also adverted to that a similar type of application had been earlier filed by defendant at Exh.55 making similar request and prayers and common order came to be passed on Exh.53 and 55 on 26-07-2017 observing that, defendant had already filed a complaint before the Deputy Registrar Co-operative Society, Jalgaon in January 2017. The suit has been instituted in February 2016 and as such, it would not be necessary to call for report from the Deputy Registrar.

4. It has further been observed in the trial Court that the burden about whether, the agreement of sale is by way of security is on the defendant and defendant is at liberty to file any document, in order to discharge his burden to adduce evidence, which he deems necessary, while the plaintiff was to

cross-examine. Such an application has been moved with a view to prolong the matter.

5. The Court thus considered that, having regard to the earlier orders passed and at the stage at which the present application has been moved, it would not be appropriate to consider the request again and the application has been accordingly rejected.

6. The aforesaid reasons which went into making the impugned order, do not appear to be in any way arbitrary or unreasonable. In the circumstances, the petition is not being entertained and is accordingly rejected.

7. This order, however, would not be an impediment for the petitioner for adducing relevant evidence in support of his case.

[SUNIL P. DESHMUKH]
JUDGE