

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

WRIT PETITION NO. 8123 OF 2017

M/S SIDDHESHWAR CONSTRUCTIONS THROUGH IT'S
PARTNER SATISH SITARAM DESHMUKH
VERSUS
THE WATER RURAL DEVELOPMENT AND WATER
CONSERVATION DEPARTMENT THROUGH ITS SEC.
MUMBAI AND OTHERS.

...

Advocate for Petitioner : Mr. Gawali Amol K.
AGP for Respondents: Mr. S N Kendre

...

CORAM : V.K. JADHAV, J.
Dated: April 11, 2018

...

PER COURT :-

1. The petitioner/original plaintiff has instituted the Special Civil Suit No.232/2012 for recovery of the compensation against the respondents. Claim of the compensation pertains to the contract awarded to the petitioner for executing the work of construction of Jambarkheda K.T. Weir at Taluka Vaijapur, District Aurangabad. Respondents have strongly resisted the suit by filing their written statement. During the pendency of the suit, the petitioner/original plaintiff has filed an application exh.26 on 20.8.2014 under Order 11 Rule 12 of the Code of Civil Procedure with the prayer

aaa/-

that the defendants may be directed to file an affidavit about the possession of the documents as detailed in the prayer clause. The respondents/original defendants have strongly resisted the said application by filing their say at exh.28. The trial court by impugned order dated 3.11.2016 below exh.26 in Special Civil Suit No.232/2012 rejected the said application. Hence, this writ petition.

2. Learned counsel for the petitioner submits that, the respondents/defendants in their say at exh.28 have not denied the possession of those documents as detailed in the application exh.26. It is their contention that, if the plaintiff relies on the same, it is his duty to file the original on record. Learned counsel submits that, all the original documents are in the custody of the respondents and since xerox copies are placed on record alongwith the suit, the petitioner/original plaintiff has filed an application under Order 11 Rule 12 of the Civil Procedure Code and as such, the plaintiff is entitled for discovery of the documents. Learned counsel submits

that, trial court without looking into the provisions of Order 11 Rule 12 of the Civil Procedure Code rejected the application on the ground that plaintiff has to stand on his own legs to prove his case and further that the plaintiff has filed the application exh.26 belatedly.

3. Learned AGP for the respondents submits that, though suit came to be instituted in the year 2012, in the year 2014 the petitioner has filed aforesaid application exh.26. Learned AGP submits that, petitioner has failed to show relevancy of those documents so far as the suit claim is concerned. Trial court has, therefore, rightly rejected the application. No interference is required. There is no substance in the writ petition.

4. Provisions of Order 11 Rule 12 enable a party to compel his opponent to disclose the documents relating to any matter in question in a suit, in his possession or power. The purpose of discovery of the documents is to secure, as far as possible, a disclosure of all material

documents in the possession or power of the opposite party and to put an end to unnecessary and protracted inquiry as to the material documents in the possession and under the control of the opposite party. It is sufficient for discovery, if the documents would be relevant for the purpose of throwing light on the matter in controversy.

5. In the instant case, respondents have not pointed out specifically as to whether those documents are in the possession of the respondents/defendants or not. Even, the trial court has not gone into the question as to whether those documents are relevant for the purpose of throwing light in the matter in controversy. The learned Judge of the trial court has not applied its mind nor considered the provisions of Order 11 Rule 12 of CPC in its proper perspective. This Court has left with no other alternative but to quash the impugned order and direct the trial court to decide the application exh.26, afresh, in the light of the discussion made herein-above.

ORDER

- I. Writ Petition is hereby partly allowed. No costs.
- II. The impugned order dated 3.11.2016 passed by the Joint Civil Judge S.D., Aurangabad below exh.26 in Special Civil Suit No.232/2012 is hereby quashed and set aside with the following directions :-
 - a] The Trial Court shall decide the application Exh.26 afresh, after giving an opportunity of being heard to both the parties within THREE MONTHS from the date of this order.
- III. Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

...