

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

WRIT PETITION NO. 2889 OF 2018

CHANDAN SATISH TOSHNIWAL
VS.
LEELA MAROTI BIRHADE

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Advocate for the Petitioner : Shri R.F.Totla h/f. Shri R.A.Karwa.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 21st March, 2018.**

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PER COURT :-

1] By this petition, the original defendant has challenged the order dated 24/04/2017, by which, the application Exhibit 12 filed in Regular Civil Appeal No. 206/2015 is rejected. The petitioner had called for a statement from the original plaintiff as to whether, the money that she alleges to have been paid to the petitioner, was accounted in her Income Tax Returns or whether, it was black money.

2] The petitioner is also aggrieved by the order dated 26/10/2017 passed by the Appellate Court, by which, application Exhibit 21 seeking amendment to the written statement, filed by the petitioner, has been rejected.

3] Reliance has been placed upon Order 41 Rule 23 to 26, the Judgment of the Honourable Apex Court in the matter of *State of M.P. Vs. Union of India [AIR 2012 Supreme Court 2518]* and the judgment of this Court in the matter of *Chandrasah Narayan Shetty Vs. Misribai Ramkuvar Pandit and others [2009(4) Mh.L.J. 983]*.

4] I have considered the strenuous submissions of the learned advocate for the petitioner. The gamut of his submission is that though he has totally denied the so-called payment made by the plaintiff to him in cash, the plaintiff must be called upon to submit the source of acquiring the said amount that she alleges to have paid the petitioner and whether the said amount has been accounted for in her income tax returns.

5] In Special Civil Suit No. 13/2013 filed by the respondent/original plaintiff, she has averred that she has made certain payments in cash to the petitioner/defendant. The sole and exclusive stand taken by the defendant in the written statement with regard to this contention of the plaintiff is that no such amount was ever paid by the plaintiff to him and he has not received any amount in cash pertaining to the

agreement to sell which is the subject matter of the suit.

6] With this definite stand taken, the trial in the suit progressed and finally culminated into the judgment and decree dated 10/02/2015. The suit was decreed and this defendant was directed to pay an amount of Rs. 10,55,000/- to the plaintiff with interest @ Rs. 6 % per annum from the date of the filing of the suit till the realisation of the entire amount. Thereafter, the defendant preferred Regular Civil Appeal No. 206/2015 before the Appellate Court.

7] By application Exhibit 12, the defendant sought an answer from the plaintiff with regard to the source of the money as noted above. The said application has been rejected since the case of the defendant always and consistently was that he had never received the said amount. The burden naturally was cast upon the plaintiff to indicate the source of the income and the payment paid. On rejection of Exhibit 12, this defendant remained silent and proceeded with the appeal.

8] An application is moved for seeking an amendment to the written statement. The reason for the amendment was that the defendant does not desire to give up his legal plank that the amount which the plaintiff claims to

have paid him, is black money. This is one of the grounds raised in the appeal.

9] When the defendant had consistently taken a stand that he had never received the amount, praying for an amendment to incorporate the ground that the amount, allegedly paid to him is black money, would naturally appear as a diagonally opposite stand taken in the written statement. It appears that, by raising this ground, the defendant desires to raise an additional issue as to whether the impugned amount said to be paid can be termed as being black money, so as to indirectly facilitate a remand of the suit to the Trial Court. Such indirect method of seeking a remand cannot be permitted.

10] In so far as the judgment of the Honourable Apex Court in the case of **State of M.P.** (supra) is concerned, I think that the facts of the case before the Honourable Apex Court are not in any way similar to those in the case in hand. In so far as the reliance on the judgment of this Court in case of **Chandrahas** (supra) is concerned, this Court has concluded that the Trial Court has rightly not passed a money decree as the consideration paid was by way of a black money. In the

instant case, the petitioner/defendant has taken a stand throughout his journey of litigation that he has never received any such amount.

11] As such, in my view, the Trial Court has rightly rejected the application for amendment as it would amount to taking a completely different stand, than the one taken in the written statement. Thus, the petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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