

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

909 WRIT PETITION NO. 3433 OF 2018

Sou. Meera W/o Vijay Mukhedkar
Age: 58 years, Occ: Business,
Proprietor of 'Mukhedkar Car décor'
R/o In front of Government Aurvedic
College, Vazirabad, Nanded
Through general Power of Attorney
holder Vijay S/o Ganeshrao Mukhedkar
Age: 62 years, Occ: Legal Practitioner
R/o In from of Government Aurvedic
College, Vazirabad, Nanded.

... Petitioner.

Versus

1. Laxminaraya S/o Venkobasa Damam
Died, through his Legal Representatives
- 1-A) Shriniwas S/o Laxminarayan Damam
Age: 40 years, Occ: Business,
R/o Behind Kalamandir, Somesh Colony,
Near Rayat Hospital, Nanded.
- 1-B) Venkatesh S/o Laxminarayan Damam,
Age : 35 yrs, Occ.: Business,
R/o : As above.
- 1-C) Vimalbai W/o Laxminarayan Damam,
Age: 61 years, Occ: Business,
R/o House No.2-9-921, Somesh Colony,
Behind Kalmandir, Nanded.
2. Shriniwas S/o Laxminarayan Damam,
Age : 61 years, Occ: Business,
R/o: House No.2-9-921, Somesh Colony,
Near Rayat Hospital, Nanded.
3. Venkatesh S/o Laxminarayan Damam,
AgeL 35 yeas, Occ: Business,
R/o : As above.
4. Mohanrao S/o Maroti Hambarde (deleted)
5. Narendra S/o Fattuseth Parmani,
Age : Major, Occ: Business,
6. Jitendra Prakash Jethani (deleted)
7. Pawan S/o Ramesh Sarda,
Age: Major, Occ: Business,

8. Rahul S/o Motilal Patne (deleted)
9. Mahendrasingh S/o Girdharsing Chavan (deleted)
10. Vimalbai W/o Laxminarayan Damam,
Age : 61 years, Occ : Business,
R/o House No.2-9-921, Somesh Colony,
Behind Kalamandir, Nanded.

... Respondents.

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Mr. Anand V Indrale Patil, Advocate for the Petitioner.

Mr. N.T. Tribhuwan, Advocate for Respondent Nos. 1A to 1C, 2, 4 and 10.

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CORAM : V.L. ACHLIYA, J.

DATED : 17th APRIL, 2018

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. By consent heard finally.
2. By this petition, filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 26.03.2018 passed in Special Civil Suit No.70/2014. By the impugned order, the trial Court has rejected the application moved by the petitioner-plaintiff to produce the original documents i.e. rent receipts.
3. Heard the learned counsel for the petitioner and respondents.
4. Learned counsel for the petitioner has contended that the trial Court has wrongly refused to exercise jurisdiction vested in it and order impugned is perverse and not sustainable in law. By inviting attention to the facts leading to make application seeking permission to produce the original documents, the learned counsel submits that inadvertently the original copies of the rent receipts remain to be produced on record, though the

xerox copies of the same were already produced and also accepted in evidence. During the cross examination of plaintiff's witness as it was realised that inadvertently original receipts remained to be produced on record, the application was moved seeking permission to produce the original rent receipts of which xerox copies were already produced. However, the trial Court has rejected the application. It is contended that in order to ensure the substantial justice being made, the trial Court ought to have allowed the application. He submit that no prejudice would cause to defendants if original receipts are allowed to be produced on record. In this context the learned counsel for the petitioner has referred and relied upon the decision of this Court in the case of ***Ivy Muriet Fonseca Vs. Porus Adi Doctor*** reported in **2005(4) Bom. C.R. 342.**

5. On the other hand, the learned counsel for the respondents argued that the filing of such application is nothing but tactics adopted by the petitioner to protract the hearing of the suit. Learned counsel pointed out that the petitioner-plaintiff has secured the order of mandatory injunction against defendants. As per the order passed, the defendants have been directed to complete the construction of shops in a specified period. He submit that in order to gain advantage of said order, the petitioner-plaintiff is deliberately adopting tactics to protract the hearing of the case. Learned counsel submit that before filing this application, various proceedings were filed before the trial Court as well as this Court. It is contended that thrice the time has been extended by this Court to decide the suit. As per the last order passed by this Court on 25.01.2018, the time has been extended by three months and the said period is going to expire on 25.04.2018. In this background, learned counsel submit that in the facts and circumstances of the case and particularly the conduct of the petitioner, the petition deserves to be dismissed.

6. Having regard to the submissions advanced in the light of over all facts of the case, I am of the view that the trial Court has erred in rejecting the application seeking production of original documents. Although the trial Court may be justified in observing that as per the requirement of law, the plaintiff ought to have produced all the original documents with the plaint or immediately after settlement of issues, but said provision not prevent the Court to accept the original documents at a stage. It is well within the scope of exercise of powers of Civil Court to allow such production at a stage subsequent to settlement of issues, if a case is made out to entertain such request. The Courts while dealing with procedural aspect are expected to adopt a pragmatic and liberal approach in entertaining such request and should not adopt hyper technical approach. Unless a case of serious prejudice or miscarriage of justice being caused to other side is made out, normally the Court is expected to entertain such request if proper explanation put forth by the party seeking such production at a latter stage. The provisions in the Code of Civil Procedure are procedural in nature and designed to facilitate justice and not to penalised or punished some one. The Courts are expected that while dealing with the procedural law, the construction of the provision be made in a manner which will serve the ends of justice and not to frustrate the object behind the provision. In the case of ***M/S R.N. Jodi & Brothers & Ors vs Subhashchandra*** reported in ***AIR 2007 SC 2571***, the Apex Court has observed that the procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In this context it is useful to refer the observations made by Full Bench of this Court in the case of ***Hemendra vs. Subodh*** reported in ***2008 (6) Mh.L.J. 886***. Para Nos. 53 to 57 of the judgment reads as under:

“53. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the C.P.C. or any other procedural enactment ought not to be construed in manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

54. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable-Justice is the goal of jurisprudence processual, as much as substantive. (See Sushil Kumar Sen v. State of Bihar, 1975 (1) SCC 774).

55. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. [See Blyth v. Blyth, 1966 (1) All E.R. 524 (HL)]. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (see Shreenath and Anr. v. Rajesh and Ors., AIR 1998 SC 1827).

56. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice as held by the Apex Court in the recent judgment in the case of M/s.R.N.Jadi and Brothers v. Subhashchandra, AIR 2007 SC 2571

57. The Court must always be anxious to do justice and prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the C.P.C. and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. Sometimes even the procedure would be considered as mandatory, no doubt, retaining the power in Court in a proper case to exercise the jurisdiction to take out the rigour of that provision or to mitigate genuine hardship."

7. Thus, in the present case, though there may be some procedural lapse on the part of the petitioner-plaintiff to produce the original documents at a proper stage, but the explanation as put forth by the petitioner-plaintiff cannot said to be wholly unacceptable. By non production of original documents, the petitioner-plaintiff has not gained anything in the matter. Since the petitioner is the plaintiff in the suit, it is difficult to accept that original rent receipts were produced at belated stage with an ulterior motive to protract the hearing of the case. Since the xerox copies of the rent receipts are produced and same appears to have been accepted in evidence no serious prejudice would cause to respondent-defendant if the original rent receipts are allowed to be produced. The cross-examination of plaintiff's witnesses is in progress and same is yet to be concluded. The documents as relied and sought to be produced are well withing the knowledge of the respondent-defendant and defendant is not going to be taken by surprise.. In that view, the impugned order is not sustainable in law. The petitioner has made out a case of refusal of exercise of jurisdiction by the trial Court. The impugned order may cause serious prejudice to the petitioner. On the contrary, no prejudice would caused to respondent-defendant if such request is granted. In that view, the petition deserves to be allowed to the extent of production of 23 original receipts. Accordingly, the impugned order is set aside. The application

exhibit 331 seeking production of documents is allowed to the extent of production of 23 original rent receipts.

8. Rule made absolute in above terms with no order as to costs.

9. The parties to act upon the authenticated copy of this order.

(V.L. ACHLIYA)
JUDGE

SPR