

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO. 12331 OF 2017

SATYAWAN S/O SARJERAO UKIRDE
VERSUS
DEEPAK S/O RADHESHYAM ZUNZUNWALA AND ANOTHER

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Mrs. Pooja V. Langhe for the Petitioner.

Mr. L. D. Vakil for Respondent No.1.

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CORAM : V. K. JADHAV, J.
DATED : 5th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the order dated 12th July, 2017 passed by the Ad-hoc District Judge-2, Aurangabad below Exhibit 15 in R.C.A. No. 509 of 2012, the appellant before the lower appellate Court/original defendant no.1 has preferred this Writ Petition.
3. The respondent No.1 has instituted Special Civil Suit No. 543 of 2009 against the present petitioner and the respondent no.2 herein for a decree of specific performance of contract alongwith a decree of perpetual injunction. The petitioner has

strongly resisted the said Suit by filing a written statement. The petitioner has raised a specific plea that he was a sub-dealer and while granting sub-dealership in his favour, the respondent-plaintiff has obtained from him blank signed stamp papers in lieu of the security and the respondent-plaintiff has misused those stamp papers. The respondent no.2 herein has also strongly resisted the said Suit by filing written statement. On the basis of the rival pleadings of the parties to the Suit, the trial Court has framed as many as eleven issues and particularly the issue no.10 has been framed in the light of the pleadings raised by the present petitioner and accordingly, the burden is also placed on the petitioner to prove the issue no.10. Both the parties led documentary and oral evidence in support of their contentions and the learned Judge of the trial Court, by judgment and decree dated 16th December, 2011, decreed the said Suit in terms of the prayer clauses. Being aggrieved by the same, the petitioner herein has preferred Regular Civil Suit No. 509 of 2012. Pending Appeal, he has filed an Application Exhibit 15 under order XLI Rule 27 of the Code of Civil Procedure seeking permission to lead additional evidence. The respondent no.1-original plaintiff has strongly resisted the said Application by filing say at Exhibit

16. The learned Ad-hoc District Judge-2, Aurangabad, by impugned order dated 12th July, 2017 passed below Exhibit 15, rejected the said Application. Hence this Writ Petition.

4. The learned counsel for the petitioner submits that the trial Court has not given proper opportunity to the petitioner to lead evidence in support of the issue no.10 and on the other hand, the trial Court has hurriedly decided the matter. In the result, the petitioner could not adduce the best evidence available with him. The learned counsel submits that the petitioner has handed over relevant documents to his counsel, however, due to inaction on the part of the counsel, those documents were not submitted before the trial Court. The learned counsel submits that the petitioner may be saddled with costs but he may be given one more opportunity to adduce evidence and discharge the burden placed on him by issue no. 10.

5. The learned counsel for the respondent-plaintiff submits that the petitioner has adduced oral and documentary evidence in support of his contentions and the petitioner has not produced the documents before the trial Court though those documents

were in his possession for the reason best known to him. The petitioner has not pointed out as to how the trial Court has not given an opportunity to the petitioner to lead evidence to discharge the burden. The impugned order is proper, correct and legal and calls for no interference.

6. On perusal of the judgment and decree passed by the trial Court, it appears that in the light of the pleadings raised by the petitioner, the trial Court has specifically framed the issue no. 10 to the effect that whether the petitioner-defendant no.1 has proved that he has handed over the blank stamp papers to the respondent-plaintiff and the respondent-plaintiff has misused those documents. The petitioner has filed his written statement and also examined himself and one more witness to substantiate his contentions. The petitioner was knowing well that the burden of issue no.10 has been placed on him. The petitioner has not even bothered to produce the documents of his sub-dealership before the trial Court. The learned counsel has vehemently submitted that on account of inaction of the counsel, the petitioner should not suffer. However, the petitioner has not raised the said ground in his Application Exhibit 15. On the other

hand, in the Writ Petition, the petitioner has stated in the grounds that inadvertently those documents were not filed before the trial Court. I do not think that the trial Court has not given opportunity to the petitioner to adduce evidence in support of his pleadings. It appears that the petitioner has not acted diligently and now, by way of filing Application Exhibit 15, he is trying to fill up the lacuna. The learned judge of the lower appellate Court has, therefore, rightly rejected the Application Exhibit 15. No interference is required. There is no substance in the Writ Petition and the same is hereby dismissed. No costs.

7. Needless to say that the lower appellate Court shall dispose of the pending Appeal on its own merits without getting prejudiced by the observations made herein.

(V. K. JADHAV, J.)

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