

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11717 OF 2018

ARVIND JUGALKISHOR AGRAWAL DIED LRS
VERSUS
TARVINDERSINGH MAHENDRASINGH DHILLON

...
Advocate for Petitioners : Shri Mujtaba Gulam Mustafa

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 31, 2018

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PER COURT :-

1 Heard the petitioners at length.

2 The petitioners / plaintiff are aggrieved by the order dated 15.6.2016, as the trial Court has rejected application Exhibit 42, by which, the request of the plaintiff to issue a direction to the defendant to lead evidence first, has been rejected.

3 The defendant has admitted a part of the claim of the plaintiff. The legality of the agreement to sell has been questioned on the ground that it was not an outright sale, but was a notional sale deed in view of the loan transaction between the plaintiff and the defendant.

4 As such, it is obvious that the foundation of the suit, which is the agreement to sell, is questioned through the written statement. The plaintiff has asserted that it was an outright sale agreement.

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5 In the matter of Sandeep Sankarlal Kedia Vs. Smt. Pooja Sandip Kedia [AIR 2014 Bom. 26], this Court has concluded in paragraph No.27 onwards that one who alleges a fact and which is disputed by the other side, will have to lead evidence first and prove the averment. If the plaintiff contends that he has nothing to prove, then the defendant may opt to lead evidence. If the defendant contends that he has nothing to prove against the plaintiff in view of the plaintiff's stand, the Court can instantly pronounce it's judgment.

6 In a judgment delivered by this Court on 15.9.2017 in the matter of Zainabee Mohammad Bashir Vs. Shivkumar and others - Writ Petition No.781 of 2003, the earlier judgments delivered in the matter of Bhagirath Shankar Somani Vs Rameshchandra Daulal Soni - [2007 (5) Mh.L.J. 508 : 2007 (4) All MR 514], Dattatray Namdeo Patil Vs. Ram Namdeo Patil and others - [2010 (3) Mh.L.J.80] and Metafield Coil Private Limited Vs. Nikvik Tube Industries Private Limited [2012 (1) Mh.L.J.289], were considered. Even the judgments delivered by the Honourable Apex Court in Krishna Mohan Kul @ Nani Charan Kul and another Vs. Pratima Maity and others - [(2004) 9 SCC 468 : AIR 2003 SC 435], and by the Gauhati High Court in Mustt. Jubeda Khatun Vs. Sulaiman Khan [AIR 1986 Gauhati 71], were considered and it was

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concluded that a defendant may seek leave of the Court to lead evidence first under Order XVIII Rules 1 and 2 of the CPC. The plaintiff does not have the authority to seek a judicial order that the defendant be directed to lead evidence first.

7 In view of the above, I do not find that trial Court has committed any error in passing the impugned order. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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