

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 WRIT PETITION NO. 9558 OF 2013

RAMKRISHNA BHANUDAS NARKHEDE
VERSUS
SMT. RAGINISHINGH RAJENDRASINGH AND ANOTHER

.....

Advocate for Petitioner : Mr. Kutti Prassana N.
Advocate for Respondent No.1 : Mr. M. M. Bhokarikar

.....

CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner-original plaintiff has filed an Application Exhibit 25 for direction to the respondent-defendant no.1 for production of a document i.e. the General Power of Attorney. The trial Court has rejected the said Application by the impugned order dated 31st August, 2013. Hence this Writ Petition.
3. The learned counsel for the petitioner submits that the petitioner-plaintiff has instituted a Suit for specific performance of a contract, possession and a decree of perpetual injunction. The learned counsel submits that so far as the agreement of sale is

concerned, there is a specific reference about the General Power of Attorney and the respondent no.1-original defendant no.1 put her signature on the said agreement of sale in her individual capacity as well as in her capacity as General Power of Attorney for defendant no.2. However, the document-General Power of Attorney is not produced before the Court. The Trial Court has however, not considered the same and rejected the Application Exhibit 25 erroneously.

4. The learned counsel for the respondent submits that the respondent has specifically denied each of the averments made in the plaint and also denied the execution of the agreement itself. The learned counsel submits that no coercive method is contemplated for production of the document when the other side has denied the execution of such an agreement of sale, wherein allegedly a reference is given to the document of General Power of Attorney. The trial Court has, therefore, rightly rejected the Application Exhibit 25 and no interference is required.

5. The Learned counsel for the respondent placed reliance on the decisions in the following two cases:

1. Order dated 1st March, 2012 passed by this Court in **Writ Petition No. 7802 of 2011** and
2. **Indian Overseas Bank vs. Shreekrishna Woollen Mills Pvt. Ltd. and others**, reported in **AIR 1988 Bombay 343**.

6. On careful perusal of the pleadings of the parties, it appears that though the petitioner has instituted the Suit for a relief of specific performance of contract alongwith the consequential benefits, however, the respondent-defendant no.1 has denied all the averments made in the plaint and also denied the execution of the agreement of sale. In such circumstances, the other side cannot be compelled for production of the document when existence of such document has been denied specifically. In the aforesaid two cases relied upon by the learned counsel for the respondent, this Court has also observed in the similar manner in identical facts.

7. In view of the above, I find no substance in the Writ Petition and the same is hereby dismissed. No costs.

(V. K. JADHAV, J.)

vre/