

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11366 OF 2017

Avinash Madhukar Kharat Petitioner
Vs.
The State of Maharashtra & Others Respondents

Mr. Umesh R. Mankapure for the Petitioner.
Mr. A.I. Patel, Addl GP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : FEBRUARY 24, 2018

P.C:

1. The petitioner says that he is entitled to refund of a sum styled as Security Deposit and which is allegedly forfeited and if not within the terms of the contract, retained unlawfully and illegally. For the first time, the retention is justified on the ground that there is an FIR registered in which even the petitioner is named as an accused and that FIR alleges that 1050 brass of sand was found to be illegally stacked and stored allegedly in a piece or parcel of land belonging to the petitioner.

Mr. Mankapure would submit that apart from the petitioner even others are named as accused and with similar allegations but when the fine was imposed, there was a stay granted to its recovery by this Court. With all this, therefore, the FIR and the allegations cannot be relied upon nor can they be linked to the wrongful retention of this Security Deposit.

2. Mr. Mankapure would submit that all this can be resolved in writ jurisdiction. We do not agree with him for more than one reason. If the petitioner himself has annexed to the petition a copy of the FIR, the allegations therein have to be proved to be false if the prosecution does not establish or is not successful in establishing and proving the charge by the petitioner. That would have to be established by, firstly, cross-examination of the prosecution witnesses in the event that FIR leads to filing of a charge-sheet naming the petitioner as an accused, framing of charge by a competent Criminal Court and holding a trial. In the event all this does not happen, the petitioner would have to file appropriate legal proceedings, including a civil suit in a competent civil Court and thereafter

prove that such retention cannot be justified by linking the allegations in the FIR to the terms and conditions of a contract for excavation of sand and which terms and conditions have been fulfilled by the petitioner, as is evident by a report submitted by the Tahsildar of the concerned village. All this, therefore, requires the petitioner to lead oral and documentary evidence. Once there is a dispute on fact, writ petition is not the petitioner's remedy. Leaving all other remedies and contentions therein open, we dispose of this writ petition.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)