

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6648 OF 2018

Parwana Amardeep Co-operative Housing]	
Society Limited.]	Petitioner
Vs.	
Salim Sajjad Bandukwalla]	Respondent

.....

Mr. Mayur Khandeparkar a/w Mr. Arun Panickar, for Petitioner.

.....

CORAM : R.G. KETKAR, J.

DATE : 25TH JUNE, 2018.

P.C:

Heard Mr. Khandeparkar, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 12th April, 2018 passed by the learned Judge, Court Room No.32 of the Court of Small Causes at Mumbai (Bandra Branch) below Exhibit 23 in T.E. & R Suit No.21 of 2017. By that order, the learned trial Judge allowed the application filed by the petitioner, hereinafter referred to as 'defendant' in the following terms;

“The instant application is allowed as under:

1. The prayer for the statement made by the purported advocate Kanchan on 18.03.2017 be held to be nonest and without any authority is rejected.
2. The statement made by the purported Advocate Kanchan for the defendant dated 18.03.2017 shall not be taken into consideration at the time of hearing and deciding injunction Exhibit 11.

3. The prayer that Affidavit in reply filed to the injunction notice by the purported advocate and purported representative of the defendant Exhibit 13 be set expunged is hereby rejected.
4. The affidavit in reply filed to the injunction application by the purported advocate Kanchan and purported representative of the defendant Exhibit-13 shall not be taken into consideration at the time of hearing and deciding injunction notice Exhibit 11.
5. Defendant is allowed to file affidavit in reply to the injunction notice of the plaintiff.
6. Injunction application Exhibit 11 be heard after filing affidavit in reply by the defendant to the injunction notice.
7. Costs in cause”.

3. Mr. Khandeparkar submitted that the respondent, hereinafter referred to as 'plaintiff' has instituted suit under section 41 of the Presidency Small Causes Courts Act, 1882 (for short 'Act') against the defendant. Plaintiff is verified by Khan Kaiser Abbas and not by the plaintiff. He submitted that the plaintiff has executed registered general Power of Attorney on 14th January, 2009 in favour of Khan Kaiser Abbas and Suhail Abbas Khan (for short 'these persons'). He submitted that a perusal of that Power of Attorney shows that the plaintiff had given Power of Attorney only in respect of proceeding of R.A.E & R Suit No.1380/4849 of 1980 which is filed by him against the defendant/society. In other words, he has not given Power of Attorney to these persons for prosecuting the present suit. Despite that, the plaintiff is verified by Khan Kaiser Abbas.

4. Mr. Khandeparkar further submitted that the suit summons for the present suit was accepted by one Kaiser Sheikh claiming to be member of the

Managing Committee. In fact, he is not a member of the Managing Committee. He invited my attention to the application made by Advocate Kanchan Chavan seeking permission to withdraw her Vakalatnama and statement dated 18th March, 2017. He invited my attention to clause 1 and 2 as also clause 3 and 4 of the operative part of the impugned order. He submitted that they are inconsistent. Whereas, by clause (1) prayer for holding that the statement of the concerned Advocate made on 18th March, 2017 be held as nonest and without any authority was rejected. By clause 2, however, the learned trial Judge observed that the statement made by the Advocate on 18th March, 2017 cannot be taken into consideration at the time of hearing and deciding injunction application Exhibit 11.

5. By clause 3 of the operative part of the order, the learned trial Judge rejected prayer for expunging affidavit in reply filed on behalf of the defendant to the injunction notice by the said Advocate. However, by clause 4, the learned trial Judge held that affidavit in reply to the injunction application filed by the concerned Advocate shall not be taken into consideration at the time of hearing and deciding injunction notice Exhibit 11.

6. Mr. Khandeparkar also invited my attention to the application Exhibit 17 dated 4th April, 2017 filed by the defendant, inter alia, praying for holding necessary inquiry into the manner of service and appearance filed on behalf of the defendant/society and further directing the plaintiff to serve entire proceeding upon the defendant/society. He submitted that the trial Court may be directed to decide application Exhibit 17 dated 4th April, 2017 along with application Exhibit 11.

7. I have considered submissions advanced by Mr. Khandeparkar. I have also perused the material on record. I have already extracted operative

part of the impugned order. While deciding injunction application Exhibit 11, the learned trial Judge shall not take into consideration the statement made by the concerned Advocate on 18th March, 2017 as also will not take into consideration the affidavit in reply purported to have been filed on behalf of the defendant by the concerned Advocate to the injunction application. The learned trial Judge shall permit the defendant to file affidavit in reply, if not already filed, to the injunction notice of the plaintiff which shall be taken into consideration by the learned trial Judge while deciding the application Exhibit 11. While deciding application Exhibit 11, it will be open to the defendant to press application dated 4th April, 2017 at Exhibit 17.

8. In view of this clarification, Mr. Khandeparkar does not press this Petition. Petition is accordingly disposed of as not pressed. Order accordingly.

[R.G. KETKAR, J.]