IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9196 OF 2017

Jayesh Chunilal Doshi ... Petitioner
V/s.
Virendra Chunilal Doshi & Ors. ... Respondents

- Mr.Satyam N. Vaishnav a/w. Ms.Nupur Mukharjee i/b.M/s.N.N. Vaishnawa & Co. for the Petitioner.
- Mr.Nitesh V. Bhutekar for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and Respondent No.1.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 7th July 2017 passed by the Ad-hoc District Judge, City Civil & Sessions Court, Mumbai, below Chamber Summons No.644 of 2017 in Suit No. 4165 of 2009.

3] The said Chamber Summons was filed by the present Petitioner, who is Defendant No.1 before the trial Court for production of the following documents:

> *"i) Books of Accounts of State Pipe Supply Company from the date of inception till date along with all Income-Tax Returns and Balance Sheets including all Ledgers of suit Partnership Firm in Plaintiffs' firm and ledgers of all accounts of the parties to whom the P.W.1 alleged to have made payments on behalf of suit firm, from the date of inception till date.*
>
> *ii) Bank Statement from the date of inception till date of State Pipe Supply Company.*
>
> *iii) Books of Accounts of Bengal Mill Stores Co. (Bombay) from the date of inception till date along with all Income Tax Returns and Balance Sheets including all Ledgers of suit Partnership Firm in Plaintiffs' firm, from the date of inception till date.*
>
> *iv) Bank Statement of the Bengal Mills Stores Supply Company (Bombay), from the date of inception till date."*

4] According to learned counsel for the Petitioner, the production of these documents is necessary to show that the amount due and payable to the suit Partnership Firm have been deposited by the Respondents/Plaintiffs in the Bank Account of "the Bengal Mills Stores Supply Company (Bombay)". This fact is admitted by PW-1 in examination-in-chief on behalf of the Respondents.

5] It is further submitted that in the Books of Account produced by the Respondents, it can be clearly seen that systematic siphoning of the funds of the suit partnership firm to the Plaintiffs' independent firm being the Bengal Mills Stores Supply Company (Bombay). It is submitted that, Respondents has also transferred the stock in trade of the suit partnership firm to his another firm being M/s.State Pipe Supply Company, without paying any money to the suit partnership firm. Respondent No.1 has also opened a dummy account to manipulate the funds of partnership firm. According to learned counsel for the Petitioner, unless all these documents as sought by him were produced, the Petitioner will not be able to bring the correct picture before the Court about the amount siphoned of and hence, it has become necessary to give direction to the Plaintiffs to produce these documents.

6] This Chamber Summons was opposed by the Respondents contending *inter-alia* that all these documents and the record of Company are more than 8 years old and they are not able to produce the same. According to them as record is bulky, the Chartered Accountant/Court Commissioner was appointed to inspect the record. He has inspected the record and submitted his report already. It was urged that the documents pertaining to his independent firms are not necessary for the decision of the suit.

7] The trial Court after hearing learned counsel for both the parties was pleased to reject this Chamber Summons, accepting the contentions raised by the Respondents.

8] The perusal of the order passed by the trial Court clearly goes to show that though the suit is for dissolution of partnership firm and rendition of accounts, admittedly the Chartered Accountant was appointed as Court Commissioner in the said suit for inspection of the account and to submit his report, the record being bulky. Accordingly, the Court Commissioner has submitted his report and his report can be challenged by the Petitioners herein, either by cross-examining him or in any other way. As the Court Commissioner was appointed for this very purpose, now production of such bulky record is uncalled for.

9] The trial Court has also considered that, admittedly bank statements, ledger account, income tax returns are the personal documents of Plaintiffs and Petitioner cannot compel him to produce all these documents.

10] In the opinion of this Court also, application filed by the

Petitioner is uncalled for. It is amounting to fishing inquiry. Some admissions are already given by the Plaintiff in his cross-examination and on the basis of them also, the Petitioner can prove his case on preponderance of probabilities, but the production of these documentary evidence is not at all called for in the facts and circumstances of the present case.

11] Hence, the impugned order passed by the trial Court, which is after considering all the aspects of this case, being just, legal and correct; no interference is warranted therein.

12] It need not be stated that, at the time of judgment, the trial Court may, on the facts the case and evidence adduced before it, if required, draw necessary adverse reference.

13] Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]