

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11685 OF 2012

Hemant Pandurang Mandlik ... Petitioner
Vs.
Arvind Vithal Ambekar & Ors. ... Respondents

Mr. A.C. Mahimkar i/b. Mr. A.J. Jadhav, Advocate for the petitioner.
Mr. J.A. Madane, AGP for respondent nos. 2 to 4.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 6th June, 2018.

P.C.:

This Writ Petition is filed under Article 227 of the Constitution of India taking exception to the order dated 23rd August, 2012 below Exhibit 79 in Civil Suit No. 427 of 2004 passed by the learned 3rd Additional Judge, Small Causes Court, Pune. The petitioner, who is defendant No. 5, has moved an application for production of documents and the said Application was rejected. Hence, this Petition.

2. The learned counsel for the petitioner submitted that initially the suit was filed only against defendant nos. 1 to 4 and defendant No. 5 was not a party to the suit. Subsequently, defendant no. 5 was impleaded as party to the suit at his instance. Though defendant no. 5/petitioner filed the written statement, he could not file the

documents along with the written statement, as the documents were not traceable. Subsequently, he moved an application because the flat was allotted in his favour and the said documents are important to be placed before the Court to defend the case of the petitioner. The learned counsel submitted that the order passed by the learned Judge is incorrect and hence to be set aside.

3. Heard the submissions. Perused the order. It appears from the order that after recording of the evidence of the plaintiff and defendant nos. 1 to 4, defendant no. 5 has moved the application for production of documents. The learned Judge has observed that the plaintiff ought to have given an opportunity to meet those documents, as there is issue in respect of allotment of flat either to the plaintiff or defendant no. 5 by defendant nos. 1 to 4. Thus, observation of the learned Judge is correct. Moreover, the order is passed on 23rd August, 2012 and thereafter immediately the Petition is filed. However, there is no order of stay of the suit and in the year 2012, the evidence of the plaintiff and defendant nos. 1 to 4 was over. Considering this status of the suit, I am not inclined to set aside the order so also there is no illegality in the impugned order. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)