

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13353 OF 2017

WITH

CIVIL APPLICATION NO.550 OF 2018 IN W.P.NO.13353 OF 2017

(Ramu Devanand Mistry through C.A. Holder Vs. Jagdish Natwarlal Naik and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. P. J. Thorat i/b. Ms Shabnam Latiwala for Petitioner.

CORAM : R. G. KETKAR, J.**DATE : 4TH JULY, 2018****P.C.:**

Not on Board. At the request of Mr. Thorat, learned Counsel for the petitioner, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the order dated 23.12.2015 passed by the learned Judge, Court Room No.26 of the Court of Small Causes at Mumbai below exhibit-38 in R.A.E.Suit No.197/333 of 2011. By that order, the learned trial Judge rejected the application exhibit-38 made by the defendant No.1 for issuing appropriate directions to the respondent No.1-plaintiff to produce the original documents mentioned in his notice dated 20.11.2015. While rejecting the application, in paragraph 5, the learned trial Judge observed that during the course of cross-examination of plaintiff, defendant's

Advocate called upon the plaintiff to produce the documents including the document at Sr.No.5 (mentioned in paragraph 2 of the impugned order) by giving a notice dated 20.11.2015. Plaintiff did not produce the said documents. The learned trial Judge observed that if the plaintiff is not ready to produce the documents, he will face its consequences. The Court will also draw adverse inference. For the reasons recorded in paragraph 5 of the impugned order, I do not find that the learned trial Judge has committed any error in rejecting application exhibit-38. Hence, Petition fails and the same is dismissed.

3. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

4. Mr. Thorat submitted that defendant No.1 has filed application dated 08.12.2015 which is at exhibit-C (pages 38 to 43) of this Petition. In paragraph 3, defendant No.1 asserted that by registered Deed of Assignment cum Conveyance dated 12.11.2012, after filing of the Suit, plaintiff has transferred and sold his ownership rights in respect of the suit property to M/s. Ruparel Home India Private Limited and as such, plaintiff ceases to be the landlord and owner of the suit property. He submitted that till date, said application is not disposed of by the learned

trial Judge.

5. In view thereof, the learned trial Judge shall dispose of the said application within two weeks from today. All contentions of the parties in that regard are expressly kept open. Order accordingly.

6. In view of the dismissal of the Petition, Civil Application No.550 of 2018 does not survive and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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