

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.805 OF 2019

Radhyeshyam s/o Ganesh Dhoot,
Age: 51 years, occu: business,
Vyapri Dharmshala Compled,
Shop No.3 & 4, First Floor,
Main Road, Latur, Dist. Latur

Petitioner

versus

Vishnukumar s/o Bansilal Kalantri
Age: 53 years, Occu: Business,
R/o Chandra Nagar,
Latur, Dist. Latur

Respondent

Mr. R.P. Adgaonkar advocate for the petitioner
Mr.C.R. Deshpande h/f Mr.C.C. Deshpande advocate for respondent.

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CORAM : **RAVINDRA V. GHUGE, J.**

Date: August 8th, 2019

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ORAL JUDGMENT

1 Rule. Rule is made returnable forth-with and heard finally by the consent of the parties.

2 The petitioner, original defendant in Special Civil Suit No.2/2013, is aggrieved by the order dated 25.10.2018, passed by the Trial Court, by which, it is concluded that, unless the other side has referred to a particular document, in its pleading, there cannot be an order, directing production of such document. It is also held that, the Court cannot compel the plaintiff to produce a document, which he has not referred-to in the plaint, under Order 11 Rule 11 to 17 of the Code of Civil Procedure.

3 The learned Advocate for the respondent – original plaintiff has strenuously supported the impugned order and submits that, this petition deserves to be dismissed with heavy costs. It is further submitted that, in a summary suit of 2013, the petitioner is unnecessarily wasting the time of the Court, as well as the time of the litigating sides.

4 I find from the impugned order that, the Trial Court has concluded that, the document sought to be produced from the plaintiff at the request of the defendant, Demat Account details, has not been referred to by the plaintiff, in the plaint. It, however, appears from paragraph No.1 of the plaint that, the plaintiff specifically admits that, he opened a Demat Account No.1201370000054854 with Mehta Equities Limited, Mumbai, under the instructions of the defendant. In the second paragraph, further details of Demat account held by the defendant are also mentioned.

5 As such, the conclusion drawn by the Trial Court is erroneous.

6 The impugned order calls for an interference, even for one more reason. Merely because a litigant does not refer to certain documents and suppresses them from the Court and if the documents are in the custody of the said litigant, which are likely to affect the result of the litigation, such documents can be called-for even at the behest of the other side. What is required

to be seen in an application, seeking production of documents by the other side is that, the documents must have a specific nexus with the cause of action and exclusivity of the custody of the documents has to be proved. The law is well settled in the matter of **20th Century Fox Corporation (I) Pvt Ltd versus F.H. Lala & another (1975 Mh.L.J. 273)** and is no longer a debatable issue.

7 Reliance placed upon the Judgment of this Court in the matter of **Ramesh Tapde & others versus Bajaj Auto Limited (1999 (3) All M.R. 48)** by the Trial Court, while rejecting Exhibit 50, is misplaced. In the said Judgment, the management had taken two stands. Firstly that, the documents called for, had no nexus with the cause of action and secondly, that, the workers were attempting to delay hearing in the matter as they had already acquired *exparte* ad interim protection.

8 In view of the above, this petition is allowed.

9 The impugned order dated 25.10.2018 stands quashed and set aside.

10 I remit Application Exhibit 50 to the file of the Trial Court in Special Civil Suit No.02/2013, since the Trial Court was not called upon to decide the issue of the nexus between the document and the cause of action and the exclusivity of possession of the document.

11 The litigating sides shall proceed to advance their oral submissions on the Application Exhibit 50 and shall cite the law applicable.

12 The Trial Court shall, thereafter decide the said application, in the light of the law cited and the observations set- out in this Judgment.

13 Rule is partly made absolute in the above terms.

(RAVINDRA V. GHUGE, J)

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