IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1105 OF 2018

SHREE LAXMINARAYAN DEVALAYA RANGAMANCH @ LAXMINARAYAN DEVALAYA, REP. BY SECRETARY, SUVARN R. PARAB., ... Petitioner

Versus

RUPAL GOPAL CHODANKAR., ... Respondent

Adv. Abhay Nachinolkar for the Petitioner.
Adv. Vishnuprasad A. Lawande for the Respondent.

Coram:- C. V. BHADANG, J.
Date:- 28th January 2019

Oral Order:

By this petition, the petitioner who is the original defendant is challenging the order dated 3/11/2018 passed by the learned trial court (Below Exhibit D-184). By impugned order, the learned trial court has allowed production of the following documents at a stage when the suit was fixed for arguments:

(i) The receipts issued to students (26 in nos) at serial no. 1638 to 1663

(ii) Income tax returns of the year 2009, 2010 and 2011.

iii) Certificate of income from xerox/typing.

2. Out of the three documents, the document at serial no.(iii) i.e. the certificate of income is a self certificate issued by the plaintiff on 22/10/2018,

the date on which the application for production was filed. Mr. Lawande, the learned counsel for the respondent, on instructions, states that the respondent shall not press for production of the said certificate. In other words, the prayer at this stage is restricted to production of the receipts and the income tax returns.

3. I have heard Shri Nachinolkar, the learned counsel for the petitioner and Shri Lawande, the learned counsel for the respondent. With the assistant of the learned counsel for the parties, I have gone through the record.

4. It is submitted by Shri Nachinolkar, the learned counsel for the petitioner that the learned trial court has come to a specific finding that the respondent was in possession of the documents and inspite of such a finding has allowed the production, which is against the law laid down by the Hon'ble Supreme Court tin the case of **M/s. Bagai Constructions Thro. Its proprietor Lalit Bagai Vs. M/s. Gupta Building Material Store, (2013) 14 SCC 1**. and **K. K. Velusamy Vs. N. Palanisamy (2011) 11 SCC 275.**

5. It is submitted that the amendment to the Code of Civil Procedure in the year 2002, is aimed at expeditious hearing and disposal of the suit and production of the documents could not have been allowed, which is in the

nature of permitting the respondent to fill the lacuna. It is submitted that the trial court has not even considered whether the respondent is attempting to fill the lacuna, when a specific ground to that effect was raised. It is submitted that the reason given for non production of the documents at the earlier stage, namely the documents have been shifted hurriedly to the godown of the brother of the respondent and the brother required the godown for reconstruction is not even supported by an affidavit of the brother of the respondent. It is submitted that the respondent did not contemporaneously file an application for reopening of the evidence. It is submitted that subsequently such an application is filed which is pending before the trial court. It is submitted that the trial court was in error in distinguishing the decision in the case of **M/s. Bagai** on the ground that in that case the production was sought at a stage when the suit was reserved for judgment.

6. Mr. Lawande, the learned counsel for the respondent has supported the impugned order. It is submitted that the petitioner had given a plausible reason for non production of the documents at the earlier stage. It is pointed out that the suit is still at the stage of hearing of arguments and an application for re-opening of the evidence is already filed, which is pending before the trial court. It is submitted that production of documents cannot amount to filling of the lacuna inasmuch as there is a specific case in the plaint, which is

supported by evidence of PW.1 that there were 20 students in the typing institute who were paying Rs.200/- per month i.e Rs.4000/- per year.

7. I have carefully considered the rival circumstances and the submissions made. The only question is whether the income tax returns for the three years and the receipts can be allowed to be produced at this stage?

8. In the case of **M/s. Bagai Constructions,** the arguments were heard and the suit was at the stage of pronouncement of judgment which was one of the reasons which weighed with the Hon'ble Supreme Court refusing to allow production of documents. In the present case, the arguments are yet to be heard.

9. The respondents claim that on account of the alleged demolition of the staircase by the petitioner, the documents were required to be hurriedly shifted to the godown belonging to the brother of the respondent and when the brother intended to reconstruct the godown, the documents were traced and are now sought to be produced. The explanation in my considered view is a plausible explanation which has been acted upon by the learned trial court. In any event the respondent did not stand to gain by non production of the documents at an earlier stage. It transpired during the course of the

arguments at bar that there is no interim relief operating in favour of the respondent in the suit. Thus it also cannot be said that the respondent is interested in prolonging the suit, so as to continue to have the benefit of any interim relief. It is evident that such production is subject to the proof of the said document in accordance with law.

10. Mr. Lawande, the learned counsel for the respondent states that in the event the trial court allows reopening of the evidence, the petitioner would restrict the examination of only one student in support of the receipts produced, in addition to PW.1.

11. Coming to the aspect of filling of lacuna, it is now well settled that there is a distinction between lacuna in a case which there is an inherent or a latent defect in the case which can only amount to a lacuna. This has to be distinguished from a situation where from out of inadvertence or circumstances beyond the control of the party, the party is unable to produce evidence. In my considered view the present case would fall in the later category, inasmuch as there is a specific pleading made in the plaint that there were about twenty students in the typing institute who were paying Rs.200/- per month. Thus it is not possible to accept that by virtue of production of documents any patent or inherent defect is now sought to be cured.

12. Considering the overall circumstances and further having regard to the fact that the petitioner would get an opportunity to meet the effect of the documents, the impugned order does not result into any manifest injustice on the petitioner. In that view of the matter, the petition is hereby dismissed. In the circumstances there shall be no order as to costs. The production of the self certificate dated 22/10/2018 is however not allowed.

C. V. BHADANG, J.

Ap/-