

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 244 OF 2016

M/s. Viraj Properties .. Applicant
vs.
Parmanand H. Thakkar and ors. .. Respondents

Dr. Birendra Saraf a/w. Mr. Subhash Jadhav and
Mr. Yakshay Chheda and Ms Warisha Parkar I/b Parinam
Law Associates for the Applicant..

CORAM : M. S. SONAK, J.
DATE : 11 APRIL 2019.

ORAL JUDGMENT. :-

1] Heard Mr. Birendra Saraf and Mr. Yakshay Chheda
learned counsel for the applicant.

2] On 22nd June 2016, this Court made the following
order:

“ Heard learned Counsel for the applicant.

2 By this Civil Revision Application, the applicant
defendant no.2 challenges the order dated 14.12.2015
passed by Addl. Judge, Small Causes Court and Joint
Civil Judge, Senior Division, Pune below Exh. 62 in
Special Civil Suit No. 404 of 2013 allowing respondent's
plaintiff's application under Order 12 Rule 8 of Code of
Civil Procedure, 1908 directing defendant no.2 to produce
the original documents as stated in paragraph 6 of the
impugned order.

3 The learned counsel for the defendant no.2
submits that they have no objection to place on record the
certified copies of those documents.

4 *Considering the submissions made by the learned counsel for the applicant and statement made by him during the course of arguments, I am satisfied that applicant has made out case for following order:*

a) *Office is directed to issue notice before admission to the Respondents, returnable on 01.08.2016.*

b) *In addition to usual mode of service, the Applicant is permitted to serve the Respondents by way of private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before next date.*

c) *Till next date, further proceeding in Special Civil Suit No. 404 of 2013, is stayed.”*

3] *Thereafter, service was effected upon the respondents.*

However, the respondents have not appeared in this petition.

Therefore, on 23rd April 2018, this Court made the following order:

“1] Learned counsel for the petitioner submits that ad-interim relief granted by this Court on 22nd June, 2016 was extended till 22.08.2016. But thereafter remained to be continued further. The petitioner has tried to serve respondent. However, respondent has not appeared.

2] In view thereof, stay granted earlier is extended till next date, with specific direction that if on that date, respondent does not appear, the matter will be taken up for final hearing.

3] Stand over to 27.06.2018”

4] Accordingly, Rule. Rule is made returnable forthwith since, it was made clear that in the order dated 23rd April 2018 that in case the respondents do not appear the matter will be taken up for final hearing.

5] The challenge in this petition is to the order dated 14th December 2015, the operative portion of which reads thus:

- “1. The defendants are directed to produce documents as mentioned in Exh.62 at Sr. Nos.1 to 4 and 6 on the record on or before next date.*
- 2. Plaintiff to take necessary steps so far as the other documents are concerned.*
- 3. Application stands disposed of accordingly”.*

6] Dr. Birendra Saraf a/w. Mr. Yakshay Chheda, learned counsel for the applicant have submitted that the plaintiff in the suit is a Real Estate Agent and the claim in the suit is towards some commission. They point out that the documents which the impugned order requires the petitioner to produce on record are original title documents. They point out that the documents are registered documents and nothing prevented the plaintiff from producing the certified copies of the registered documents on record. They point out that without prejudice the applicant have offered to place on

record the certified copies of the documents. For all these reasons, they submit that the impugned order may be set aside.

7] According to me, since the documents of which production is directed, are registered documents, the plaintiff, could have as well placed on record the certified copies by seeking leave from learned Trial Court. In any case, interests of justice will be met if the applicant, consistent with their offer, are now directed to produce on record the certified copies of the aforesaid documents, i.e., documents at Sr.Nos.1 to 4 and 6 in Exhibit 62 before the Trial Court within a period of four weeks from today. According to me, this will occasion no prejudice whatsoever to the plaintiff in the suit and will also benefit the applicant, who, will not then be required to place on record the original title deeds.

8] The impugned order is accordingly, modified in the aforesaid terms.

9] The issues of relevancy of the documents etc., are kept open to be determined in the suit.

10] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

11] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)