

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6954 OF 2018

M/s. Micro Factor through its Authorized
Representative Sanjay M. Savarkar ... Petitioner
Vs.
Surekha Jugmandar and another ... Respondents

Mr. Kezer Kharawala i/b. Lex Juris for Petitioner.
Mr. Nikhil M. Deshpande for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 27, 2019

P.C. :

Heard Mr. Kharawala, learned Counsel for the petitioner and
Mr. Deshpande, learned Counsel for the respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 20.12.2017 passed by the learned 4th Additional Judge, Pune below exhibit-55 in Civil Suit No.204 of 2016. By that order, the learned trial Judge allowed application exhibit-55 filed by the respondent No.1-plaintiff under Order XI, Rule 16 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and directed the defendants to produce documents mentioned in that application.

3. In support of this Petition, Mr. Kharawala strenuously contended that the learned trial Judge has committed serious error in allowing the application in its entirety. He relied upon Order XI, Rule 16 of C.P.C. to contend that parties are entitled to copies of the documents which are either relied / referred to in the pleadings or affidavits and not otherwise. By the present application at exhibit-55, plaintiff has made fishing inquiry and has sought documents which are neither relied nor referred in the pleadings or affidavits of the defendant. He further submitted that

documents at items No.1 to 6 are in the public domain and the plaintiff can very well approach the concerned authorities for that purpose. He, therefore, submitted that in so far as documents at items No.1 to 6 referred in application exhibit-55 are concerned, the learned trial Judge was not justified in directing the defendant to produce those documents. In so far as item No.7, namely, new Partnership Deed executed with the present partners as mentioned in the written statement is concerned, he submitted that no Partnership Deed was executed by the defendant. In any case, defendant has neither relied nor referred to the new Partnership Deed in the written statement. He, therefore, submitted that Petition requires consideration.

4. On the other hand, Mr. Deshpande has invited my attention to paragraphs 3 and 6 of the plaint. In paragraph 3, plaintiff asserted that the defendant has shown herself as the owner of the plot and building to the Pune Municipal Corporation and got the said plot regularized under Gunthewari Act. The defendant had practised fraud by suppressing the information from the Pune Municipal Corporation and got the Gunthewari Certificate. In paragraph 6, plaintiff asserted that defendant No.1 has not paid the municipal taxes since 2014. He submitted that the documents, which are to be produced by defendants No.1 to 3 are referred to and relied upon by the defendant in the written statement. In particular, in paragraph 19(c), reference is made to the Deed of Partnership dated 28.03.2011. By that Partnership Deed, Mr. Ravindra Ratnaparkhi and the defendant No.3 joined as partners of the defendant No.2. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. The plaintiff filed application under Order XI, Rule 16 of C.P.C. requiring defendants No.1 to 3 to produce the following documents:

- “1. Gunthewari Certificate issued under The Gunthewari Act, bearing No.0018450;
2. Government licenses issued for carrying out the business that are issued in the name of defendant No.2;
3. Partnership deed of the Micro factor;
4. Receipt of Municipal taxes paid since the year 2014;
5. Partnership deed executed in the year 1992 with the name of Micro Factor;
6. Dissolution of Partnership deed in the year 2010;
7. New Partnership deed executed with the present partners as mentioned in the Written Statement.”

6. In so far as the documents at Sr. No.1 to 6 are concerned, they are within the possession of the defendant. In the written statement, defendant has also made reference to Gunthewari Certificate No.0018450. In view thereof and for the reasons recorded in paragraphs 11 to 14 of the impugned order, I do not find that the learned trial Judge has committed any error in allowing the application. In so far as the item No.7 is concerned, it is clarified that defendant shall produce the Partnership Deed referred in paragraph 19(c) of the written statement. Subject to this clarification, Petition fails and the same is dismissed. 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.

(R. G. KETKAR, J.)