

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6519 OF 2019***

Shri. Narayan V. Dhakate

... Petitioner

Vs

Smt. Pushpa Arun Yete

... Respondent

Mr. Girish R. Agarwal, Advocate for the Petitioner.

Mr. Yogesh Dabke, advocate for Respondent.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON : 9th July, 2019

PRONOUNCED ON : 25th July, 2019

P.C. :

1. Petitioner/ plaintiff, instituted the suit for specific performance of contract, seeking enforcement of agreement dated 30.10.2010 executed by the respondent/ defendant. It is petitioner's case that the defendant/ vendors had agreed to procure no objection certificate from the housing society, where the suit flat is situated. It is plaintiff's case that no objection certificate from the society is required by the Life Insurance Housing Corporation for disbursing the loan. That since the vendors/ defendant failed to discharge their obligation under the suit agreement, he instituted the subject suit.

2. The petitioner/ plaintiff led the evidence by filling affidavit in lieu of evidence on 22.08.2017. On 11.01.2018 he sought leave of the Trial Court to produce a letter dated 16.07.2010, purportedly written by vendor/ defendant and her husband to the society for issuing no objection certificate for selling the flat; and second letter dated 19.01.2011, written by the defendant/ vendor to the society requesting not to issue no objection certificate without her permission. Learned Trial Judge allowed this application on 11.01.2018. On 02.02.2018 petitioner closed his evidence and filed an application to that effect below Exhibit 50.

2. On 21.06.2018, when defendant's witness was under cross examination, petitioner requested the Trial Court to issue the witness summons to the officer, of Life Insurance Housing Corporation and the Housing Society under Order 18 Rule 17 of Civil Procedure Code, 1908.

3. Again on 10.01.2019 the plaintiff requested the Trial Court to issue witness summons to the officer of the Life Insurance Housing Corporation for producing original documents/ letters, which were

already exhibited below Exhibit 39 and Exhibit 40.

4. Learned Trial Court declined to issue the witness summons and rejected the application on 05.03.2019 against which, this Writ Petition is preferred.

5. Letter dated 07.08.2010 a loan sanction letter issued by the Life Insurance Housing Corporation and a letter renewing the sanction, are on record and exhibited as Exhibit 39 and Exhibit 40 respectively as evident from proceeding at page no. 68 of the paper book/ petition. Learned Trial Judge rightly declined to issue witness summons to the officer of Life Insurance Housing Corporation, since its contents were also referred to and relied upon by the plaintiff in examination in chief.

6. That even otherwise, the plaintiff had an opportunity to examine the officer of Life Insurance Housing Corporation and produce such evidence earlier. The plaintiff therefore ought to have satisfied the Court that non production of the documents and non examination of the witness, earlier was for valid and sufficient reasons.

7. In this case, the loan sanction letters and its renewal are on record. Its' contents were referred to in the examination in chief and there upon these documents are exhibited at Exhibit 39 and Exhibit 40. The Trial has reached to the stage of arguments. That even otherwise, the evidence on record is clear and unambiguous and therefore the order passed by the Trial Court declining to issue witness summons to the officer of Life Insurance Housing Corporation at the fag end of the trial cannot be interfered with.

8. The petition is therefore dismissed.

(SANDEEP K. SHINDE, J.)