IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9394 OF 2018

Sanjay Damu Batav .. Petitioner

vs.

Dr.Vinayak D. Joshi .. Respondent

Mr.Girish R. Agrawal for the petitioner

Mr.Parag P. Pokale for the respondent

CORAM: K.K. TATED, J
DATED : JANUARY 31, 2019

P.C. :

1 Heard.

2 By consent, matter is taken on board for final hearing at the stage of admission itself.

3 By this Petition, under Article 227 of the Constitution of India, petitioner original plaintiff is challenging the order dated 09.07.2018 passed by 5th Joint Civil Judge, Senior Division, Thane below Exhibit 24 in Summary Suit No.189 of 2017 directing petitioner plaintiff to produce Income Tax Returns from the year 2005 to the year 2016 as per Order XI Rule 12 of the Code of Civil Procedure, 1908.

4 In the present proceeding, petitioner original plaintiff filed Summary Suit No.189 of 2017 in the court of 5th Joint Civil Judge, Senior Division, Thane for recovery of sum of Rs.1,17,25,667/- along with interest @ 15% per month from the respondent original defendant. In that Suit, the defendant filed application under Order XI Rule 12 of the Code of Civil Procedure, 1908 for directing plaintiff to produce Income Tax Return. Defendants have made following prayers in his application below Exhibit 24.

> *"a. Application under provision of O. 11 R.12 of the Code of Civil Procedure may be allowed with cost.*
>
> *b. The Plaintiff may be directed to produce on record the Income Tax Returns for the period of 2005 of 2010.*
>
> *c. The Plaintiff may be directed to produce on record the Income Tax Returns for the period of 2010 to 2016.*
>
> *d. Any other order that this Hon'ble Court deem fit and proper may be passed in the interest of Justice."*

5 That application was allowed by the Trial Court. Hence, plaintiff filed present Writ Petition.

6 The learned counsel for the petitioner original plaintiff submits that neither plaintiff in his plaint nor defendant in his written statement made any reference of Income Tax Return filed by the plaintiff and inspite of that, Trial Court allowed defendant's application below Exhibit 24. He submits that the

issue about production of Income Tax Return is covered by the recent judgement of this court in the matter of ***Dr.Jagannath Ganesh Hegde vs. M/s.In Depth Entertaining Arts Pvt. Ltd. & Ors., 2018(7) All MR 194***. He submits that in this authority, our High Court has categorically held that there is no question of direction to the parties to produce Income Tax Return. He further submits that Telangana & Andhra Pradesh High Court in the matter of ***Kalva Komuraiah & Anr. vs. Kalva Boddaiah & Ors. Reported in 2018(3) Civil Court Cases 398 (T&A)*** held that without satisfying the requirement of foundation in pleadings is impermissible to direct for production of documents. On the basis of these submissions, the learned counsel for the petitioner submits that impugned order is required to be set aside.

7 On the other hand, the learned counsel for the respondent original defendant vehemently opposed the present Writ Petition. He submits that in the present proceeding, petitioner filed summary suit for recovery of amount. He submits that whether said amount is accounted by the plaintiff in his account or not, that can be known on the basis of Income Tax Return. Hence, he has filed application under Order XI Rule 12 of the Code of Civil Procedure, 1908 for directing petitioner to produce Income Tax Return. He submits that Trial Court after considering the evidence on record, rightly held that plaintiff has to produce Income Tax Return on record. There is no substance in the present Writ Petition and same be dismissed with costs.

8 Heard.

9 It is to be noted that in the present proceeding, admittedly neither petitioner in the plaint nor respondent original defendant relied on Income Tax Return in their pleading. Apart form that, in view of the judgment of our High Court in the matter of ***Dr.Jagannath Ganesh Hegde vs. M/s.In Depth Entertaining Arts Pvt. Ltd. & Ors., 2018(7) All MR 194*** (Supra), I am of the opinion that petitioner has made out a case for allowing Writ Petition. Hence, following order:

a) Order dated 09.07.2018 passed by 5th Joint Civil Judge, Senior Division, Thane below Exhibit 24 in Summary Suit No.189 of 2017 dated 9.7.2017 is set aside.

b) Writ petition is allowed accordingly.

c) No order as to costs.

(**K.K. TATED, J.**)