

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9953 OF 2018

Jaiprakash Prahlad Mishra

...Petitioner

Versus

M/s Ish Homes Pvt. Ltd.

...Respondent

....

Mr. Dushyant Pagare i/b. R.R. Dixit, Advocate for the Petitioner.

Mr. Mayur Khandepkar a/w. Asif Shaikh, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 20th MARCH, 2019

P.C.

1. Heard Mr. Dushyant Pagare, learned counsel for the petitioner and Mr. Mayur Khandeparkar, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1' has challenged the order dated 3.8.2017 below Exhibit-72 as also the order dated 19.7.2018 below Exhibit-74 passed by the learned Judge, Court Room No.9 of the Court of Small Causes at Bombay in R.A.E. & R. Suit No.125/180 of 2011. By order dated 3.8.2017, the learned trial Judge partly allowed the application Exhibit-72 made by defendant No.1 to strike out paragraphs-3 to 8 of additional affidavit dated 16.3.2017 filed by the respondent, hereinafter referred to as the 'plaintiff'. The learned trial Judge directed the plaintiff to strike out paragraphs-5 to 7 of

additional affidavit Exhibit-70. By order dated 19.7.2018 below Exhibit-74, the learned trial Judge rejected the application made by defendant No.1 seeking review of the order dated 3.8.2017 passed below Exhibit-72.

3. In support of this petition, Mr. Pagare invited my attention to paragraphs-3 and 7 of the order dated 5.4.2018 passed by this Court in Writ Petition No.11997/2017. In paragraph-3, submission made on behalf of the plaintiff that there is no conveyance deed and the plaintiff wants to prove agreement of sale and copy of the resolution dated 21.12.2010, was noted. In paragraph-7, this Court observed that a perusal of the plaint does not even remotely indicate reference of the agreement of sale which is sought to be relied by the plaintiff. In other words, the additional affidavit of evidence cannot travel beyond the pleadings of the plaintiff.

4. Mr. Pagare invited my attention to the order dated 3.8.2017 as also the order dated 19.7.2018 and the additional affidavit dated 16.3.2017 and in particular paragraph-4 thereof. He submitted that the challenge in the present petition is restricted to the documents referred in paragraph-4 of the affidavit. In paragraph-4 of the affidavit, the plaintiff has referred to four respective agreements of sale dated 30.9.2006 bearing Serial Nos.9570/2006, 9571/2006, 9572/2006 and Serial No.9870/2006 dated 10.10.2006 registered with Sub-Registrar of

Assurances, Mumbai. He submitted that in view of the statement recorded in paragraph-3 of the order dated 5.4.2018 passed in Writ Petition No.11997/2017, the plaintiff accepted that there is no conveyance deed. The learned trial Judge was, therefore, not justified in refusing the prayer of defendant No.1 to strike out paragraph-4 of the affidavit. He, therefore, submitted that the petition requires consideration.

5. On the other hand, Mr. Khandeparkar has invited my attention to the order dated 22.2.2017 passed by the learned trial Judge below Exhibit-65 as also the prayers made in the application Exhibit-65. By prayer clause (b), the plaintiff prayed for producing the conveyance deed dated 10.7.2006 and 14.7.2006. By order dated 22.2.2017, the learned trial Judge permitted the plaintiff to produce the documents and lead evidence to prove the documents i.e. conveyance deed and copy of the resolution dated 21.12.2010. He submitted that defendant No.1 has not challenged said order. In view thereof, he submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is rather a matter of record that the plaintiff filed application Exhibit-65. Prayer clause (b) reads thus :

“(b) That this Hon'ble Court may be pleased to permit the Plaintiff to produce the conveyance deed dt. 10/7/2006 and 14/7/2006.”

7. By order dated 22.2.2017, the learned trial Judge allowed that application. It is also not in dispute that said order is not challenged by defendant No.1. In view thereof, it is not possible to interfere with the impugned order, save and except clarifying that the contention of defendant No.1 that the documents referred in paragraph-4 of the affidavit do not constitute conveyance deed is expressly kept open. The learned trial Judge while deciding the suit finally will also deal with this contention of defendant No.1. Subject to this, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)