

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10091 OF 2019

Sharwan Vishwanath Kapur & Ors.	...	Petitioners
V/s.		
Smt.Nirmal Kulbhushan Kapur & Ors.	...	Respondents

Mr.PB. Shah i/b. Mr.K.P. Shah for Petitioners.
Mr.Prashand Chande a/w. Mr.Vinayak Vengurlekar and Ms.Sneha Munj i/b. Nair
Vengurlekar & Co. for Respondent Nos.1, 2 and 4.

CORAM : A.S. GADKARI, J.

DATE : 25th November 2019.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioners-original defendant Nos.3, 5, 7 and 9 have impugned Order dated 2nd August 2019 passed in Notice of Motion No.2544 of 2019 in Suit No.7488 of 1983, thereby rejecting the said Motion filed by the petitioners, for production of List of Documents along with Documents and List of Witnesses, under Order 8 Rule 1-A(3) and/or Order 18 Rule 4 of the Civil Procedure Code (for short, “Code”) and/or for discarding the documents placed on record by the respondents-plaintiffs for want of leave under Order 7 Rule 14 of the Code.

2] Heard Mr.Shah, learned counsel for the petitioners at length and Mr.Chande, learned counsel for the respondent Nos.1, 2 and 4 (Original Plaintiffs). Perused the entire record annexed to the Petition.

3] The record indicates that, at the time of filing of the written statement, the petitioners-original defendant Nos.3, 5, 7 and 9 did not annex necessary and relevant documents in support of their case and therefore, the Trial Court had rejected their application for grant of further time and/or to adjourn the matter by its Order dated 11th September 2018. The said Order was challenged by the petitioners by way of Writ Petition (St.) No.25817 of 2018 in this Court. This Court by its Order dated 14th September 2018 granted one week time to the petitioners to file documents on which the petitioners had relied upon in their written statement in the Suit No.7488 of 1983. The relevant paragraph No.2 of the said Order reads as under:

“2. Mr.Chande, learned counsel for the respondent no.1A (original plaintiff) states that his client has already filed the documents which she relied upon. Mr.Shah, learned counsel for the petitioners seeks one week time to file the documents which his clients has relied upon in the written statement in the Suit No.7488 of 1983. Statement made by the learned counsel for the petitioners is accepted. The other defendants have not challenged the order dated 11th September 2018 passed by the learned trial Judge and are thus bound by the said order. It is made clear that no further extension of time would be granted.”

4] The record further indicates that, the petitioners had filed those documents before the Trial Court within stipulated period. The trial has thereafter began and the witnesses of the plaintiffs have been examined. Various documents have been produced on record and have been marked as exhibits. In this

background, the petitioners have filed aforesaid Notice of Motion No.2544 of 2019 in Suit No.7488 of 1983 with the following prayers.

“(a) That this Hon’ble Court may be pleased to grant leave to produce the list of documents along with documents and list of witnesses under Order 8 Rule 1A(3) and/or Order 18 Rule 4.

Alternatively

(b) The documents as placed on record by the Plaintiff may be discarded from evidence for want of leave under Order VII Rule 14.

(c)

(d)”

As noted earlier, the Trial Court by its impugned Order has rejected the said Motion.

5] Mr.Shah, learned counsel for the petitioners submitted that, there are three stages for production of documents by the defendant. That on being served with the summons, the defendant appears and files written statement under Order 7 Rule 1 of the Code in which the defendant can admit or deny the documents filed by the plaintiff. This is the first opportunity to the defendant to deny or admit the documents. Rule 8A of the Code thereof cast duty on defendant to produce documents upon which relief is claimed by him. That under Order 13 Rule 1 of the Code, one more opportunity is available to the parties to produce documentary evidence at or before settlement of issues. This is an additional stage to admit, deny or object to the admissibility of the documents. That, under Order 18 Rule

4(1) of the Code, clearly provides that, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls the witness for evidence; provided that where documents are filed and parties are rely upon the documents, the proof and admissibility of such documents which are filed along with the affidavit shall be subject to the Orders of the Court. That at this stage, one more opportunity is provided to the party to produce the documents. In support of his contention, he relied upon the decision of the Full Bench of this Court in the case of *Hemendra Rasiklal Ghia V/s. Subodh Mody*, reported in 2008(6) *Mh.L.J.* 886.

6] Mr.Shah, learned counsel for the petitioners further submitted that, in view thereof, the petitioners filed the aforestated Notice of Motion seeking leave of the Court to produce 'List of Documents' along with 'Documents and List of Witnesses' as contemplated under Order 8 Rule 1-A(3) and/or Order 18 Rule 4 of the Code. He submitted that, as the respondent Nos.1, 2 and 4 (original plaintiffs) did not seek leave of the Court to produce additional documents i.e. the documents which are not mentioned and annexed to the plaint, he had also prayed in the said Motion that, the documents placed on record by the plaintiffs be discarded from evidence for want of leave under Order 7 Rule 14 of the Code. He submitted that, the Order passed in Writ Petition (St.) No.25817 of 2018 was restricted and confined to the stage, as contemplated under Order 13 Rule 1 of the Code and by virtue of the observations made in para 2 of the said Order, the petitioners cannot be prohibited from further producing the documents under

Order 18 Rule 4 of the Code. He therefore prayed that the impugned Order may be set-aside by allowing the present Petition.

7] At the outset, it is to be noted hear that, the para No.2 of Order dated 14th September 2018 as reproduced hereinabove, does not prescribe any particular stage for production of documents. The request of the learned counsel for the petitioners to this Court to draw an inference that the said Order was passed at the stage of Order 13 Rule 1 of the Code cannot be accepted and it has to be discarded at its inception for the basic reason that, it is nowhere mentioned in the said Order that it is upto a specific stage. The record indicates that, as the petitioners had failed to produce necessary and relevant documents along with their written statement, this Court had granted liberty to the petitioners 'to file the documents', which the petitioners have relied upon in the written statement in Suit No.7488 of 1983. The leave and/or liberty granted by this Court to the petitioners was not qualified by any caveat and/or covenant. It clearly appears to this Court that, after the plaintiffs produced additional evidence on record and after recording substantive evidence in that behalf when it realised to the petitioners that, it is detrimental to their interest, as and by way of sheer afterthought the petitioners have moved the said Motion. It further appears that, the petitioners with a view to adopt delaying tactics and/or to procrastinate the main suit have filed the said Motion, which is *dehors* of any merits. It is to be further noted hear that, Order 18 Rule 4 of the Code does not prescribe leave to be obtained from the Court at the time of filing of the said documents. Learned counsel for the petitioners with

utmost fairness conceded to the legal proposition that, leave is not necessary for producing documents under Order 18 Rule 4 of the Code. Despite the said fact, the petitioners choose to file the said Motion seeking leave to produce documents under the said Order.

8] Perusal of record and the impugned Order would clearly indicate that, the Trial Court has not committed any error either in law or on facts while rejecting the Motion preferred by the petitioners.

9] In view thereof, I find no merits in the present Petition.

Petition is accordingly dismissed in *limine*.

10] The learned Judge of the City Civil Court, Mumbai, seized of Suit No.7488 of 1983 is hereby directed to expedite the hearing of the said suit and to conclude the same within a period of one year from today.

[A.S. GADKARI, J.]