

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

6 WRIT PETITION NO.1537 OF 2007

Pushpadanteshwar Co-operative Sugar
 Factory Ltd. At Samsherpur having its
 Registered Office At Shahada
 District Nandurbar
 Through its Office Superintendent,
 Rajaram s/o Nathu Patil,
 Age: 56 years, Occupation: Service
 R/o: Pushpadanteshwar Co-op. Sugar
 Factory Ltd., at Samsherpur,
 District Nandurbar.

... Petitioner
 (Original Plaintiff)

Versus

1. Girdharilal Sugar & Allied
 Industries Ltd.
 (Formerly named Narmada
 Sugar Ltd. Ghatwa, Tal. Thikri,
 District Khargaon now in
 District Badwani 2.
2. Shri. Rajesh G. Agrawal, Age Adult,
 Occupation Business & Managing
 Director and Chariman of Narmada
 Sugar Ltd. Ghatwa, i.e.,
 Girdharilal Sugar & Allied
 Industries Ltd. Ghatwa, Tal. Thikri,
 District Khargaon now in
 District Badwani.
3. Shri. G.P. Tulsyan, Age Adult,
 Occu. Resident Director of
 Narmada Sugar Ltd., Ghatwa, i.e.,
 Girdharilal Sugar & Allied
 Industries Ltd. Ghatwa, Tal. Thikri,
 District Khargaon now in District
 Badwani.

... Respondents
 (Original Defendants)

...

Mr. Shantanu A. Deshpande holding for Mr. P.R. Patil, Advocate
 for the Petitioner
 Mr. Chetainya C. Deshpande, Advocate for the Respondents

...
CORAM : V. K. JADHAV, J.
DATED : 10th February, 2020

ORAL JUDGMENT:-

1. Heard both the sides.
2. The petitioner is the original plaintiff and the respondents are the original defendants in Special Civil Suit No.35 of 1999. On 29.06.1999, The petitioner – original plaintiff has filed a Special Civil Suit No.35 of 1999 for recovery of Rs.76,05,328/- against the respondents – original defendants before the Civil Judge, Senior Division, Shahada. Pending the suit, the petitioner – original plaintiff has filed an application (Exhibit-102) seeking permission to produce the documents on record. The respondents – defendants have resisted the said application. On 18.01.2007, the learned Civil Judge, Senior Division, Shahada has rejected the application (Exhibit-102). Hence this writ petition.
3. Learned counsel for the petitioner-original plaintiff submits that the trial Court accepts that those documents are material documents. However, the learned Judge of the trial Court has rejected the application (Exhibit-102) mainly on the ground that the application has been submitted belatedly. The learned Judge of the trial Court has also observed that, if the production is permitted at belated

stage, the defendants will have no opportunity to cross-examine the plaintiff's two witnesses. Learned counsel, on instructions from the petitioner-plaintiff submits that the petitioner-plaintiff has no objection, if those two witnesses re-called for cross-examination, in the event if the production is allowed. Learned counsel submits that even the earlier order came to be challenged before this Court by filing the Writ Petition No.5861 of 2006 wherein this Court (Coram: V.R. Kingaonkar, J.) has remitted the matter to the trial Court to consider such an application filed for production of documents afresh on its own merits. Learned counsel submits that even then, the trial Court has rejected the application on such flimsy grounds.

4. Learned counsel for the respondents-original defendants submits that after examination of two witnesses, the petitioner-plaintiff has filed an application for production of documents without any explanation as to why those documents were not produced along with plaint or even before commencement of the evidence. Learned counsel submits that the cross-examination of the plaintiff's witnesses was over and thereafter, the petitioner-plaintiff has filed an application for production of those documents. The trial Court has rightly rejected the said application. No

interference is required. The writ petition is liable to be dismissed.

5. On perusal of the impugned order passed below Exhibit-102, it appears that the trial Court has almost accepted that those documents sought to be produced, are material documents. However, the trial Court has rejected the application (Exhibit-102) mainly on the ground that the production sought belatedly. Furthermore, the trial Court has also expressed the apprehension that the respondents - defendants will have no opportunity to cross-examine the plaintiff's two witnesses. Learned counsel for the petitioner - plaintiff, on instructions has made a statement that the petitioner - plaintiff will have no objection, if those two witnesses examined by the petitioner - plaintiff, are recalled for cross-examination, in the event, if the production is allowed. Furthermore, the evidence of the respondents defendants is yet to be commenced and in view of the same, the respondents - defendants would get opportunity to adduce the evidence in rebuttal. By the impugned order dated 14.03.2007, this Court has granted ad-interim relief in terms of prayer clause 'B' and as such pending hearing and final disposal of this petition, the further proceedings in Special Civil Suit No.35 of 1999 pending before the learned

Civil Judge, Senior Division, Shahada have been stayed. In view of the discussion above, I am inclined to allow this writ petition. Hence, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby allowed.

(II) The impugned order dated 18.01.2007 passed by the learned Civil Judge, Senior Division, Shahada below Exhibit-102 in Special Civil Suit No.35 of 1999 is hereby quashed and set aside .

(III) The application (Exhibit-102) in Special Civil Suit No.35 of 1999 is hereby allowed, subject to the following conditions;

(a) The trial Court shall re-call the plaintiff's witnesses, if so desired by the respondents – defendants for further cross-examination.

(b) The respondents – defendants are also permitted to adduce the documentary evidence in rebuttal, if it is necessary and if so desired, in addition to the oral evidence.

(IV) The trial Court is hereby directed to dispose of the suit, as expeditiously as possible, preferably within a period of one (1) year from the date of this order.

(V) Rule made absolute in the above terms.

(V. K. JADHAV, J.)