

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6973 OF 2007

Smt. Madhubala Lalitkumar Jain (Golecha)
Age 46 years, Occ. Household
R/o. 2nd floor, Sumnai Building,
Datta Mandir Road, Chopda
District Jalgaon

...Petitioner

versus

1. Shyam Devidas Sonar
Age 35 years, Occ. Business,
R/o. Ankita Jewellers, Bazarpeth
Chopda, District Jalgaon

2. The State of Maharashtra
Through Police Station Officer,
Police Station Chopda City
Chopda, District Jalgaon

...Respondents

.....
Mr. R.R. Sancheti h/f Mr. R. R. Mantri, advocate for the petitioner
Mr. S.S. Dambe h/f Mr. N.T. Tribhuvan, advocate for respondent No.1
Mr. A.B. Chate, A.G.P. for respondent No.2
.....

CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard both sides.

2. The petitioner is the original plaintiff. The petitioner has instituted suit bearing R.C.S. No. 27 of 2007 for declaration and perpetual injunction. The petitioner's claim mainly based upon one document styled as an agreement of sale dated 02.07.2003. The respondent No.1 has lodged a complaint in the concerned police

station in respect of the said document alleging in the complaint that the said document is false and forged. Thus, on the basis of the complaint lodged by respondent No.1, crime No. 53 of 2007 came to be registered in the concerned police station for the offences punishable under Sections 468, 464, 420 r.w. 34 of I.P.C. against the present petitioner and one another. During pendency of the suit, respondent No.2/Investigating Officer in the aforesaid crime has filed an application Exh.61 praying therein for handing over the original agreement of sale for the purpose of investigation, as the investigating officer wanted to send the said document to the handwriting expert. The petitioner-plaintiff has strongly resisted the application by filing say at Exh.62 on the ground that this Court by order dated 11.9.2007 in the writ petition No. 3828 of 2008 has stayed further proceedings of the suit and as such the trial court cannot pass any order on the application Exh.61 filed by respondent No.2 investigating officer. It has also been contended that the said original agreement of sale is necessary for just decision of the application for temporary injunction. It has also been stated that the investigating officer can obtain photo copy of the disputed document. The respondent-original defendant has given no objection. Learned C.J.J.D. Chopda by impugned order dated 12.11.2007 in R.C.S. No. 27 of 2007 allowed application Exh.61 and further directed that the document i.e. an agreement of sale dated 02.07.2003 filed at serial No.2 of list Exh.5 be given to the custody of the investigating officer (respondent No.2 herein) for the purpose of investigation on his filing

its photo copy on the record with direction that he will return the document to the Court without making any change or any alteration in it, as early as possible. The learned Judge of the trial court has also given direction to the Nazir to keep the certified copy of the said agreement of sale Exh.5/2 on the record. Hence, this writ petition.

3. Learned counsel for the petitioner submits that by order dated 11.9.2007 while granting Rule in writ petition No. 3828 of 2007, this Court has granted interim relief in terms of prayer clause "B" and as such, further proceedings in R.C.S. No. 27 of 2007 pending in the court of Civil Judge, Junior Division, Chopda came to be stayed. Learned counsel submits that despite the said order of stay, the trial court has passed the impugned order. Learned counsel submits that the said document is necessary for further hearing of the application for temporary injunction. Learned counsel submits that if the original document is given to the investigating officer and if it is sent to the handwriting expert, there is likelihood of tampering with the document. Learned counsel submits that original document may not be returned in its original form to the court after it is processed by the handwriting expert. Learned counsel submits that photo copy of the said document could have been given to the investigating officer for carrying out further investigation into the crime, if any. Learned counsel submits that the petitioner has also filed an application under Section 482 of Cr.P.C. for quashing the said F.I.R. However, the trial court has committed haste in passing the order for handing over the

disputed document to the investigating officer.

Learned counsel for the petitioner, in order to substantiate his submissions, placed reliance on the judgment of Madras High Court in the case of ***Doraiswamy Gounder and another vs. Paravammal, reported in AIR 1976 Madras 66.***

4. Learned counsel for respondent No.1 submits that on the basis of complaint lodged by respondent No.1, the aforesaid crime came to be registered against the petitioner and one another for having committed the forgery of the document. In view of the same, it was necessary for the investigating officer to ascertain as to whether the disputed document is forged one or not. Learned counsel submits that the trial court has not proceeded with trial of the suit and even the trial court has also observed in the same manner. In order to facilitate further investigation into the crime, the trial court has directed to hand over the original document to the investigating officer for sending it to the handwriting expert. Learned counsel submits that unless the original document is tendered, the opinion about its genuineness or otherwise cannot be given by the handwriting expert. Furthermore, the original document was directed to be given in the safe custody of the investigating officer. There is no likelihood of damage to the document as apprehended by the petitioner, since the Government handwriting expert was going to examine the said document. Learned counsel submits that the order

passed by the trial court is correct and legal and no interference is required and the writ petition is liable to be dismissed.

5. It appears that there is no dispute that on the basis of complaint lodged by respondent No.1 the aforesaid crime came to be registered against the petitioner and one another for having committed the offences punishable under sections 468, 464, 420 r.w. 34 of I.P.C. It is also not disputed that the said crime came to be registered in respect of the agreement of sale dated 02.07.2003 filed at serial No.2 of list Exh.5 before the Civil Court in the pending suit. There is no reason to stall further investigation into the crime. In terms of the order passed in writ petition No. 3828 of 2007 as referred above, further proceedings in the suit were already stayed. In view of the same, the said original disputed document was not immediately needed for the purpose of hearing. I find no fault in the approach of the trial court in allowing the application filed by the investigating officer. The trial court has specifically observed that in order to facilitate the further investigation into the crime, the application Exh.61 is required to be allowed. There is no question of disobeying the order passed by the court since the trial court has not proceeded with the hearing of the suit. Though learned counsel has placed his reliance on the judgment in the case of ***Doraismamy Gounder and another vs. Paravammal, (supra)***, however, after going through the facts of the said case, I do not think that the same is applicable to the facts of the present case. Furthermore, in the

said case, the court has also distinguished the facts about sending the disputed document to the Government handwriting expert and private handwriting expert. Thus, considering the entire aspects of the case, I find no fault in the order passed by the trial court. This writ petition has been filed without any basis. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

rlj/