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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12987 OF 2019

Smt. Kashiben Nanalal Thakkar **... Petitioner.**

Versus

Shri Dilipkumar Pranjeevan Thakkar
and Ors. **... Respondents.**

. . . . . .

Mr. Rajesh Datar i/b Mr. Dushyant S. Pagare for the Petitioner.

. . . . . .

CORAM : A. S. GADKARI, J.

DATE : 3rd JANUARY, 2020

P. C. :

1. By the present Petition under Article 227 of the Constitution of India, the petitioner/original defendant No.1 has impugned Order dated 14th November 2018 passed below Exhibit-67, directing the petitioner to produce Income Tax Returns and books of account for the period of 2005 to 2018 within 15 days from the date of passing of the said Order and Order dated 7th November 2019 passed below Exhibit-76, allowing the said application preferred by the respondent No.1, striking off the defence of the petitioner for non compliance of Order dated 14th November 2018 passed below Exhibit 67 by the learned Joint Civil Judge Junior Division, Kalyan in R.C.S.No. 52 of 2005.

2. Heard Mr. Datar, learned counsel for the petitioner at length. Perused the record annexed to the Petition.

3. The record indicates that, the respondent No.1 has filed aforestated R.C.S. No.52 of 2005 for eviction of the petitioner and Respondent Nos.2 and 3 from the suit premises, on the ground of arrears of rent, and subletting. That the respondent No.1 had filed an application below Exhibit 67 on 18th September 2018 under Order 11 Rule 14 and 16 and Order 8 Rule 1-A of the Code of Civil Procedure for production of documents by the petitioner. The petitioner filed reply to it on 31st October 2018 and had pleaded that, she tried her level best to search the documents, but unfortunately the documents are not traceable or rather not found and therefore the petitioner was not able to file the documents on record.

The Trial Court by its Order dated 14th November 2018 passed below Exhibit-67 directed the petitioner to produce Income Tax Returns and books of account for the period 2005 to 2018 within 15 days from the date of passing of the said Order.

As the petitioner did not produce the said documents on record within stipulated period as directed by the Trial Court by its Order dated 14th November 2018, the respondent No.1 /original plaintiff filed an application below Exhibit 76 for striking out defence of the petitioner. The Power of Attorney holder of the petitioner i.e. her son Mr. Navin

Thakkar filed his reply dated 4th June 2019. It is stated in the said reply that, though he took search of the documents for quite long time, could not find the documents and after taking charge of the business of the suit premises, since last two years he submitted the profit and loss accounts for the years 2016-17 and 2017-18. He produced on record the said documents with his reply.

The Trial Court by its impugned Order dated 7th November 2019 passed below Exhibit-76, has allowed application preferred by the respondent No.1 and has struck out defence of the petitioner for non compliance of Order dated 14th November 2018 passed below Exhibit 67.

4. Mr. Datar, learned counsel for the petitioner submitted that, what is contemplated under Order 11 Rule 14 is ‘production of documents’ and under Rule 16 is ‘notice to produce documents’. He submitted that, the said procedure ought to have been adopted by the parties interse prior to filing of the application by the respondent No.1/plaintiff before the Court and the consequence of non-compliance thereto can not be under Rule 21 of the said Order, thereby striking out defence of the petitioner/defendant No.1.

Mr. Datar, learned counsel, on instructions from Mr. Naveen Thakkar who is personally present in the Court, submitted that, the said Power of Attorney Holder of petitioner is unable to tell for how many financial years the petitioner has filed Income Tax Returns. He further submitted that, whatever documents were in possession of the petitioner have been produced before the Trial Court and in view thereof the impugned Order dated 7th November 2019 passed below Exhibit 76 needs to be set aside by allowing the present petition.

5. At the outset, it is to be noted here that, the say dated 4th June 2019 to Exhibit 76 has been filed by Mr. Naveen Thakkar who is son and the Power of Attorney holder of the petitioner. Upon a query put to him by this court that, for how much accounting years the petitioner has filled Income Tax Returns and/or whether the petitioner is in fact paying Income Tax or not, it was answered through the learned counsel that, he needs to enquire the said fact with his Chartered Accountant. This Court has observed the demenour the said witnesses and it clearly appears that, the said witness is not correctly answering the question put to him by this Court and is trying to conceal material information from the Court, which can not be appreciated.

6. The record clearly indicates that, the petitioner has failed to comply with the Order dated 14th November 2018 passed below Exhibit 67 and as a consequence thereof, the Trial Court has passed Order dated 07th November 2019 below Exhibit 76, thereby striking out defence of the petitioner.

7. As far as, the contention of the learned counsel for the petitioner that, the procedural aspects as contemplated under Rule 14 and

16 of Order 11 i.e. non-compliance of the procedural aspects as per Rule 14 and 16 of Order 11 by the petitioner, Rule 21 will not be attracted is concerned, a plain reading of Rule 21 would indicate that, where any party fails to comply with any Order to answer interrogatories or for discovery or inspection of documents he shall, if a plaintiff will be liable to have his suit dismissed for want of prosecution and if a defendant, to have his defence if any struck out and to be placed in the same position as if he had not defended.

It is to be noted here that, Rule 21 mentions the words, "any Order to answer interrogatories or for discovery or inspection of documents". Indubitably the legislature has incorporated the said words i.e. 'any Order' which contemplates an Order passed by the Court of competent jurisdiction and not by the parties interse as contended by the learned counsel for the petitioner and therefore his said contention cannot be accepted.

8. As noted earlier, in the present case the petitioner has failed to comply with the directions issued by the Trial Court by its impugned Order dated 14th November 2018 passed below Exhibit 67 under Order 11 Rule 14 and 16 and as a consequences thereof, the Trial Court has passed Order dated 7th November 2019 below Exhibit 76.

9. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329* has

enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors.* reported in *(2015) 5 SCC 423.*

10. After perusing the entire record and the impugned Orders passed by the Trial Court below Exhibit 67 and 76, this Court is of the considered view that, the Trial Court has not committed any error either in law or on facts while passing the said Orders.

11. The Petition being dehors of merits, is accordingly dismissed.

(A. S. GADKARI, J.)