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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 91 OF 2021

Dost Mohammed Gulam

....Petitioner

V/s.

Mohammed Hayat Khan

.....Respondents

Mr. Pradeep Thorat for the Petitioner

Mr. Suraj Kudalkar for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 15, 2021.

P.C.:

1] Heard.

2] Special Civil Suit No. 1322 of 2020 was initiated by Respondent-Plaintiff for declaration that he is bonafide purchaser of the Suit property and also for injunction. In the said Suit, Applications Exh. 3 & 4 are moved by Respondent-Plaintiff under Order VII Rule 14 (3) praying therein leave to produce compilation of documents which is annexed with the said Application. Respondent

also moved another Application on 14/12/2020 for the very same purpose which is allowed by the impugned order. As such, this Petition.

3] Mr. Thorat, learned counsel for the Petitioner submits that Applications which are moved are contrary to the established procedure as is followed in the Bombay City Civil Court. According to him, learned City Civil Court while allowing the Application for the limited purpose of deciding the issue of interim relief has committed a procedural error as the notice of motion ought to have been taken out by the Respondent-Plaintiff which should have been supported by the affidavit. So as to substantiate his contentions, my attention is invited to provisions of Section 40 & 43 of Bombay City civil Court Act 1948 and also various forms prescribed under the Rules. According to him, if the procedural Statute provides for a particular thing is to be done in a particular way then it has to be done in that way alone. Petitioner has also placed reliance on the Judgment of this Court in the matter of **Bombay Enamel Works Vs. Purushottam S. Somaiya** reported in [1974] 0 MhLJ 947 so as to substantiate his

contentions that the procedural law must be followed. According to him, even the order impugned sans reasons for granting such permission. He has also drawn support from the Judgment of the Apex Court in the matter of **Iridium India Telecom Ltd. Vs. Motorola INC.** reported in **[(2005) 2 Supreme Court Cases 145]**. According to him, Code of Civil Procedure, 1908 is not applicable to the proceedings on Original Side of the High Court of Bombay and same is governed by Original Side Rules. Same procedure needs to be applied to proceedings in Bombay City Civil Court particularly by adopting and following the procedure laid down in the Rules framed thereunder.

4] Respondents supported the order impugned.

5] Considered rival submissions.

6] When confronted with mandatory nature of provisions, learned counsel for the Petitioner submits that Court cannot be

discriminatory in proceedings particularly permitting production documents through Application for the purpose of deciding injunction Application.

7] It is noticed that in entire gamete of the matter, if any procedural irregularity is committed by the City Civil Court while passing the order impugned same has no way prejudiced the Petitioner-Defendant particularly when the said Court has equally protected the interest of the Petitioner. It is further required to be noted that learned counsel for the Petitioner is unable to demonstrate that provisions as are brought to the notice of this Court are applicable even to the production of documents that too at the stage of deciding interim application, much less prejudice if any caused to him.

8] In the aforesaid background, Judgment cited by the learned counsel for the Petitioner will be of hardly any assistance as same are at all not dealing with issue i.e. sought to be canvassed in this petition.

9] In the aforesaid background, once the Petitioners can submit objection to the documents on merit, I do not see any reason which warrants interference in extraordinary jurisdiction.

10] Petition as such fails, stands dismissed.

11] Time granted by the Court below of two weeks in favour of the Petitioner shall commence from 25/01/2021.

[NITIN W. SAMBRE, J.]