

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

940 WRIT PETITION NO.4209 OF 2020

**CHANDRASHEKHAR MAHADEO PARCHURE THROUGH LRS VIDYA
CHANDRASHEKHAR PARCHURE AND ANOTHER
VERSUS
ASHWINKUMAR HARDAS ARORA AND OTHERS**

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Advocate for Petitioners : Mr. Bhandari Anand P

Advocate for Respondent : Mr. Sant Kishor C.

CORAM : MANGESH S. PATIL, J.

DATE : 08.07.2022.

PER COURT :

Heard the learned advocates of both the sides finally with consent.

2. The petitioners are the original defendant Nos. 1A and 1B in a suit filed by the respondent for specific performance of an agreement to sell the suit property dated 09.12.2011.

3. The petitioners in their written statement's paragraph No. 8 asserted that in fact one more agreement was entered into between the parties on the same day in respect of the suit property itself mentioning that the consideration amount would be Rs. 92,00,000/-. By moving application (Exh. 91) they sought a direction to the respondents to produce that original agreement on record. The respondents specifically denied about any such second agreement to have been entered into and also denied custody. By the order under challenge the trial court has rejected the application (Exh. 91).

4. The learned advocate Mr. Bhandari for the petitioners would submit that there has been a *prima facie* material to reveal that there was a second agreement executed on the same day and even it was notarized. Even a photo copy of that agreement was annexed with the application. In the absence of the original on the record, the petitioners would be deprived of confronting it and getting it proved during the cross examination of the respondents/plaintiffs. The trial court ought to have considered this aspect and should have issued a direction to the respondents to produce the agreement. The order has caused a serious prejudice and may be quashed and set aside.

5. The learned advocate Mr. Sant for the respondents submits that the respondents have been stoutly denying the fact of existence of any such second agreement and obviously its possession/custody. In the absence of custody they could not have been directed to produce the document.

6. I have carefully considered the rival submissions and perused the papers. Existence or otherwise of the second agreement of the same day has been disputed by the respondents and even the custody. Even if the petitioners are in possession of a photo copy of such alleged second agreement, as has been pointed out by the trial court in the order under challenge, they may have to take recourse to the requisite provisions under the Evidence Act and if they are able to make out the grounds as

contemplated under Section 65 of the Evidence Act, they would be entitled to lead secondary evidence.

7. Though the petitioners were soliciting a direction of the trial court to produce a document, the application was in fact a notice to produce a document. Once its existence as well as custody is denied by the other side/the respondents, there was no further course to be followed albeit the order was solicited and the trial court obliged by passing the order rejecting the application (Exh. 91).

8. In view of the above circumstances, in my considered view, the trial court has not erred in rejecting the application.

9. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

mkd/-