

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9713 OF 2019

Sureshchand S/o. Parasmal Jain (Bamb) ...Petitioner

Versus

Subodh S/o. Shivnarayan Mantri & Anr. ...Respondents

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Mr. S.G. Chapalgaonkar, Advocate for the petitioner.

Mr. Swapnil Patunkar i/by. J P Legal Associates for Respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th AUGUST, 2022

ORDER :

1. Present petition is filed under Article 227 of Constitution of India challenging the order passed by learned 7th Joint Civil Judge, Senior Division, Jalna, below Exhibit-57 in Special Civil Suit No. 11/2016.

2. The petitioner/original plaintiff has filed suit for specific performance of contract and for a declaration that sale deed executed by defendant No. 1 in favour of defendant No. 2 be declared null and void and not binding on the plaintiff. The suit is resisted by the defendants by filing written statement.

3. The petitioner/plaintiff thereafter filed application Exhibit-57 contending that Jalna People's Co-operative Bank, Sadar Bazar, Jalna has issued the account statement in which details are given in respect of cheque which was given to the defendant No. 1 by the plaintiff and stop payment order of the said cheque by the plaintiff. The account statement and the letter issued by the bank is electronic record and so as to prove the same it is necessary to call bank manager of the said bank as witness. It is therefore prayed that the bank manager/concerned officer of Jalna People's Co-operative Bank Ltd., Sadar Bazar, be called as a witness, with original record. This application was opposed by the defendants. The Trial Court has rejected the application on the ground that there is no sufficient cause given by the plaintiff as contemplated under Order 16 Rule 3. The plaintiff has failed to place on record list of witnesses. This order is impugned in the present petition.

3. I have duly considered the rival submissions of both the parties. Perused the grounds raised in the petition and the impugned order.

4. Though, the Trial Court has observed in the impugned order that there is pleading about issuance of cheque in favour of defendant No. 1 and thereafter stop payment direction given by the plaintiff, the Trial Court has rejected the application only on the ground that the plaintiff has not filed list of witnesses and application is completely silent as to why list of witnesses is not filed and sufficient cause is not disclosed by the plaintiff.

5. By rejecting the application, the Trial Court has denied fair and reasonable opportunity to plaintiff to lead best possible evidence in support of his case. The approach of the Trial Court appears to be too technical. The impugned order since it denies fair opportunity to lead evidence to the plaintiff, in my view cannot be sustained. The Trial Court ought to have allowed the application by imposing suitable cost on the petitioner.

6. Since the impugned order causes prejudice to the petitioner/plaintiff and it denies fair and reasonable opportunity to lead best possible evidence, it cannot be sustained.

7. In the result, writ petition is allowed.
8. The impugned order dated 20.04.2019 passed by 7th Joint Civil Judge, Senior Division, Jalna in Special Civil Suit No. 11/2016 is hereby quashed and set aside.
9. Application Exhibit-57 is allowed, subject to the petitioner paying cost of Rs. 10,000/- to the defendant in the Trial Court.

[NITIN B. SURYAWANSHI, J.]