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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.194 OF 2022
WITH
INTERIM APPLICATION NO.1308 OF 2022

Bansidhar Annaji Bhakad .. Appellant

Versus

Ismail Yusuf College & Anr. .. Respondents

...

Mr.R.V.Govilkar for the Appellant.

Ms.Tanaya Goswami for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 24th MARCH, 2022

P.C:-

1. Heard the learned counsel for the appellant and the learned A.G.P. representing respondent No.2.

2. The present appeal is filed, being aggrieved by the order passed by the City Civil Court, Mumbai on 10/01/2022 on a Notice of Motion filed by the appellant, who is a plaintiff, for striking off the defence and rejection of the written statement, on the ground that the defendants have failed to give inspection of the documents, as directed by this Court in it's order dated 13/08/2007.

3. The appellant is the original plaintiff, who filed a suit before the City Civil Court for the following reliefs :-

“(a) That, defendant be ordered and decreed to pay to the Plaintiff a sum of Rs.43,00,900/- (Rupees Fourty Three lacs Nine Hundred Only) as loss and damage as per the particulars of claim shown in Ex.‘K’ with the interest thereon at the rate of 12% per annum from the date of suit till payment, or such other sum as this Hon’ble court may deem fit with interest thereon at the rate of 12% per annum from the date of the suit till the payment.

(b) That, the Defendant be ordered and decreed to pay to the Plaintiff the costs of the suits.

(c) That, such other and further reliefs be granted as the nature and circumstances of the case may require.”

4. The institution of the suit was the initiating point and, thereafter, the appellant travelled through various proceedings before this Court to justify his stand that his dismissal/removal from service was not in accordance with law. He spent much time in the Court than the period for which he served respondent No.1 and his whole emphasis in the proceedings was to refute the contention of the State that he had approached the Maharashtra Administrative Tribunal and has also preferred a Special Leave Petition (SLP).

In order to make good the said statement, he was repeatedly insisting for the copy of the Original Application

(O.A.) and the SLP, being brought before the Court or that he shall be permitted to have an inspection of the said documents. Ultimately, in the wake of the Chamber Summons filed by him, the inspection of documents was granted to him on 03/01/2008 and he prepared a note of inspection, which reflects that O.A.No.531 of 1992 does not bear the signature of the plaintiff nor it bear the signature of the Advocate of the Applicant. Similarly, there is no vakalatnama signed by him in the O.A. As far as SLP No.6946 of 1992 which was produced for inspection is concerned, the inspection note reveals that it does not bear the signature of the plaintiff nor his vakalatnama is to be found on record to infer that he was party in the SLP.

5. Upon inspection of the necessary documents, it was always open for the plaintiff to take his stand forward and deal with the contentions advanced against him, that he had filed the O.A. and the SLP. Ultimately, the burden shifts on the Government to establish that he was in fact a party to the proceedings.

6. However, as far as the present appeal is concerned, I need not delve deep into the controversy about what would be the consequences of the documents which are traced out in the inspection and whether the Government is justified in taking a stand to that effect, leaving it to be determined by the competent Court.

7. As far as the present appeal is concerned, Notice of Motion No.3988 of 2017 is dismissed by the learned Judge on the ground that there is no denial on the part of the defendants for inspection and, therefore, their defence cannot be struck off.

I see no legal infirmity in the said order, since the learned Judge has clearly recorded that the inspection was offered to the plaintiff and the documents of which, the inspection was offered are specifically mentioned in para 22 of the impugned order. The learned Judge, therefore, concluded that the defendants cannot be made to take the consequences of not granting inspection to the plaintiff, in terms of the order passed by this Court and, therefore, they shall not be allowed to defend the proceedings filed by the plaintiff.

8. Upholding the impugned order, the present Appeal from Order stands disposed off alongwith it's pending application.

(SMT. BHARATI DANGRE, J.)