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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL WRIT PETITION NO. 4369 OF 2022
WITH
INTERIM APPLICATION ST NO. 9374 OF 2022
IN
CIVIL WRIT PETITION NO. 4369 OF 2022
WITH
INTERIM APPLICATION ST NO. 9375 OF 2022
IN
CIVIL WRIT PETITION NO. 4369 OF 2022**

SHRI. NEERAJ UDAYRAJ SHARMA

....PETITIONER

V/s.

**SHRI. VISHAL RAMKRISHNA DUTT
AND ANR**

.....RESPONDENTS

Mr. Abhijeet Rane Advocate for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 13, 2022.

P.C.:

1) After Petitioner-Judgment Debtor suffered a Decree for specific performance, has taken out Civil Appeal No. 11/2016, in which vide Exh. 6 & 13, he had sought production of original Power of Attorney which is allowed by the Appellate Court as both parties i.e. Judgment

Debtor and Decree Holder have relied on photocopy of the said Power of Attorney during the pendency of the Suit. However, prayer to the extent of production of other documents viz. income-tax returns and valuation of the Suit property came to be rejected. As such, this Petition.

2) Drawing support from the Judgment of the Apex Court in the matter of **Union of India V/s. K. V. Lakshman and others**¹ submissions of learned counsel for the Petitioner are, documents of which production was granted under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) are the public documents. According to him, such documents are necessary for deciding the Suit claim and the consideration/appreciation of said documents will have direct impact over merits of the matter. As such, according to him, Court below committed an error in refusing production of documents which is contrary to the aforesaid Judgment. So as to further substantiate his claim, he has invited my attention to the observations in the order impugned and the adjudication of the claim in the Suit.

3) I have appreciated the said submissions in the light of the claim

¹ (2016) 13 Supreme Court Cases 124

under Order XLI Rule 27 of the CPC.

4) Fact remains that documents of which production is not granted vide order impugned were very much in the custody of the Petitioner when the suit claim was adjudicated. There is no convincing explanation coming forth which is prescribed within the purview or scheme of Order XLI Rule 27 of CPC that Petitioner for sufficient cause and inspite of due diligence was unable to produce such documents.

5) Even if it is claimed by the counsel for the Petitioner that documents of which production is not granted are public documents, that by itself will not give leverage to the Petitioner to mandate the lower Appellate Court to exercise and grant relief under Order XLI Rule 27 of CPC unless he satisfies the very requirement under said provisions which he has failed to.

6) In the aforesaid background, if the law cited before this Court in the matter of **Union of India** [cited supra] is appreciated, what can be noticed is, Apex Court in the said order was conscious of the scheme of provisions of Order XLI Rule 27 of the CPC. Apex Court then noted that claim for production as was canvassed in the said

case was not contested by the other side, leave apart matter of production of public documents. The Court further observed that production was sought of a public document at the behest of public authority i.e. Central Government which is not the case of the Petitioner before this Court.

7) In that view, even if ratio therein is considered, same will be of hardly any assistance to the Petitioner.

8) As such, I hardly see any reason which warrants interference in the order impugned. Petition as such fails, stands dismissed.

9) As a consequence, pending Interim Applications also stand disposed of.

[NITIN W. SAMBRE, J.]