

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3259 OF 2022

M/s. Nandan Builders and Anr.

..Petitioners

Versus

Anita Krishnarao Shirolkar @

Mrs. Janaki Vikas Morey

Since deceased through legal heirs and Ors.

..Respondents

Mr. Y. V. Divekar a/w Kalyani Bane i/by Divekar & Co., for the
Petitioners.

Mr. Hemant Ghadigaonkar, for the Respondent Nos.1 to 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 29th MARCH, 2022

PC.

1. The prayer for production of documents is opposed by the respondents/plaintiffs, resulting into passing of the impugned order against the petitioners/defendants.

2. It appears that the cause for moving application Exh.261 for permission to produce documents was based on third attempt on the part of the respondents/plaintiffs for grant of temporary injunction.

3. Petitioners have sought production of the documents in support of their plea for opposing the prayer for grant of temporary injunction in the pending suit. It is claimed in the application for

production of documents that documents were already produced, however, are not traced on the record of the Court.

4. This Court is not required to go into the said issue, in view of objection raised by the counsel for the respondents/plaintiffs.

5. However, it is to be noted that the prayer of the respondents/plaintiffs for grant of temporary injunction is opposed by the petitioners by filing their reply and with such reply they have every right to produce documents so as to demolish case of the respondents/plaintiffs for grant of temporary injunction.

6. The application for injunction is required to be decided on the basis of pleadings, affidavits and the documentary evidence on record. As such, there is inbuilt power vested in the Court while deciding an application for injunction to receive documentary evidence. Whether such documents which are produced are admissible in evidence, is an independent issue which can be gone into at the time of analysing or deciding the suit claim. Appropriate support can be drawn from Rule 14 of Order VII of the CPC.

7. In the aforesaid background, even if there is no express provision under Order XXXIX of the CPC to the effect of permitting the party to the proceedings to produce the documents, however, under Section 151 of the CPC, it is always open for the Court to

permit the production of documents for hearing of the application under Order XXXIX Rule 1 and 2 of the CPC.

8. In the case in hand, the situation for production of the documents is created by the respondents/plaintiffs and it cannot be said that the respondents/plaintiffs can oppose the prayer for production of documents for deciding temporary injunction application. That being so, the application Exh.261 stands allowed. The order impugned is quashed and set aside. Petitioners to deposit cost of Rs.5,000/- before the Trial Court. Apportionment of which be ordered by the Court below.

9. However, this order will not permit the petitioners from withdrawing any documents which are already placed on record.

10. Needless to clarify that such documents which are permitted to be produced shall be dealt with in accordance with its evidential value and in accordance with the provisions of the Evidence Act.

11. The petition as such stands allowed in above terms.

[NITIN W. SAMBRE, J.]