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

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 8584 OF 2021**

**AGARWAL & COMPANY**

**....PETITIONER  
(DEFENDANT)**

**V/s.**

**VINEET ELECTRICALS**

**.....RESPONDENT  
(PLAINTIFF)**

**Mr. Sudhir V. Sadavarte for the petitioner  
Ms. Yashasvita Apte for respondent**

**CORAM : NITIN W. SAMBRE, J.**

**DATE: JANUARY 7, 2022.**

**P.C.:**

1] This petition is by defendant to Special Civil Suit No. 748/2013, initiated by respondent-plaintiff for recovery of the amount.

2] It is claimed by respondent-plaintiff that he was working as 'sub-contractor' for petitioner-defendant in execution of certain contracts dues of which are not cleared.

3] Application Exh. 45 and 50 were taken out by the respondent-plaintiff seeking issuance of witness summons under the provisions of Order VII Rule 14 of the Code of Civil Procedure, 1908 which is allowed vide impugned order.

4] Impugned order is assailed by the petitioner-defendant on the ground of absence of pleadings in the Plaint viz pleading that respondent-plaintiff is not in possession of certain documentary evidence and as such, he may be permitted to summon the witnesses from the department of Defence. Mr. Sadavarte, learned counsel for the petitioner would urge that attempt on the part of the respondent-plaintiff is nothing less than misusing Court proceedings for summoning senior officials. He would claim that it is for the respondent-plaintiff to stand on its own legs to prove his case and as such, order impugned is not sustainable.

5] Learned counsel for respondent-plaintiff would support the order impugned and sought dismissal of the petition. According to him, pursuant to witness summons, already witness appeared with

relevant record, however, petitioner sought adjournment and as such is prolonging the Suit.

6] The Trial Court while dealing with the prayer of respondent-plaintiff considered the necessity of summoning the witnesses and accordingly ordered issuance of witness summons with directions to produce documents vide impugned order.

7] Said order appears to be based on necessity to prove certain facts as the petitioner admittedly is sub-contractor of the respondent-defendant, who is a contractor of defence department.

8] Thus, claim of the respondent-plaintiff that he is not in possession of certain documents and as such, same is required to be summoned from the authorised persons/officials is duly appreciated and granted vide impugned order for effective adjudication of the Suit claim.

9] Statutory source to exercise such jurisdiction directing

issuance of witness summons to the officials of defence department can be inferred from the provisions of Order VII Rule 14 of Code of Civil Procedure, 1908. Though claimed by the counsel for the petitioner, evidence is not required to be pleaded is a settled position of law.

Since the documents which are relied on by the respondent-plaintiff were not in his possession or power, he has taken out proceedings for issuance of witness summons and production of documents which is rightly so granted by the Court below having regard to provisions of Sub Rule 2 of Rule 14 of Order VII of Code of Civil Procedure, 1908. Scrutiny of evidence of such witnesses is an independent issue which will be gone into by the Court at appropriate stage of the proceedings, however, it cannot be said that Court below has passed the order without jurisdiction. The Court below while passing the order impugned was sensitive to the fact that such documents which are sought to be summoned by the respondent-plaintiff are not in his custody and are germane for deciding the cause raised in the Suit.

10] Rather the conduct of the petitioner in adjourning the suit proceedings inspite of the fact that officers who are summoned as witnesses have attended Suit proceedings with relevant documents speaks of very approach of the Petitioner in delaying the Suit proceedings.

11] No case for interference in extraordinary jurisdiction is made out. Petition stands dismissed.

12] Since this Court on 06/12/2021 granted Ad-interim relief in favour of petitioner, same is continued for a period of two weeks as prayed.

**[NITIN W. SAMBRE, J.]**