

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

WRIT PETITION NO.1331 OF 2023

**JAWED KHAN DEVELOPERS PVT. LTD. THROUGH ITS DIRECTORS
JAWED KHAN WAHED KHAN AND ANOTHER
VERSUS
SHIVAJI TUKARAM SANGALE**

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Advocate for Petitioners : Mr. Mahesh R. Sonawane

Advocate for Respondent : Mr. R.V. Gore

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JULY, 2023

PER COURT :

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioner challenges the order dated 12/12/2022, passed by learned 5th Civil Judge, Senior Division, Aurangabad, below Exhibit-28 in Special Civil Suit No.192/2018, thereby directing petitioner to produce documents on record.

2. Respondent/plaintiff filed Special Civil Suit No.192/2018 for recovery of amount of Rs.26 Lakhs against petitioner/defendant. Defendant appeared and resisted the suit by filing written statement. After framing of issues, the matter is posted for evidence of plaintiff. Plaintiff filed application Exhibit-28 for issuing direction to the defendant for production of agreement dated 14/06/2017, executed between the plaintiff and defendant before notary. The said application is the base of filing the suit by plaintiff.

Defendant by filing say opposed the prayer contending that the agreement is not in his custody. Trial Court has allowed the application Exhibit-28 and directed defendant to produce original agreement dated 14/06/2017, on record, on or before the next date. Hence, the present petition.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the writ petition memo, annexures thereto and the impugned order.

4. Learned advocate for respondent by placing reliance on Rule 14 of Order 7 submits that Trial Court is justified in allowing application Exhibit-28.

5. Trial Court has allowed the application merely on the ground that there is no specific denial on the part of defendant about custody of the said agreement or about execution of the agreement. Defendant has not mentioned about custody of the agreement is with the plaintiff. Therefore, Trial Court has observed that *"it appears to me that the custody of original agreement is apparently with the defendant"*.

6. The impugned order is unsustainable as the defendant has categorically denied that he is having agreement in his possession. In this situation, he cannot be compelled to produce the

document which is not in his custody. Plaintiff can, if so advised, prefer application for leading secondary evidence of the said agreement. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 12/12/2022, passed by learned 5th Civil Judge, Senior Division, Aurangabad, below Exhibit-28 in Special Civil Suit No.192/2018, is quashed and set aside.
- (III) Application Exhibit-28 is rejected with liberty to the plaintiff to file appropriate application, as is permissible in law.

(NITIN B. SURYAWANSHI, J.)