

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

WRIT PETITION NO. 1450 OF 2023

Saroj Dilip Gandhi .. Petitioner

Versus

Nilesh Subhash Chopada and others .. Respondents

Shri Sharad V. Natu, Advocate for the Petitioner.

Shri A. D. Ostwal, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 08TH FEBRUARY, 2023.

FINAL ORDER :

. Petitioner is aggrieved by the order dated 21st January, 2023 rejecting petitioner's application for production of documents and for permission to adduce evidence in support of the document.

2. Special Civil Suit No 144 of 2012 was instituted by the petitioner-plaintiff for redemption of equitable mortgage and for cancellation/setting aside sale deed dated 31st July, 2008 executed by the petitioner in favour of the respondent Nos. 1 and 2 as collateral security. In the written statement, there was specific regarding the mortgage deed and assertion that by virtue of the sale deeds the respondents have become absolute owners and possessors of the property in question was taken. An application for amendment was sought, as against rejection of which, writ petition was filed before this Court. During the pendency of the writ petition it was claimed that there were talks of settlement as the respondents invited the petitioner and her

sons for settlement. It is further claimed that based on the assurance of the respondent No. 1 about the settlement, writ petition came to be withdrawn by the petitioner on 15th July, 2022 and subsequently there was a meeting at the house of the respondent No. 2, in which meeting a document in the hand writing of the respondent No. 2 was executed and handed over to the petitioner for finalization. It is further claimed that as no positive response was received from the respondents about the settlement, the suit Spl. C. S. No. 144 of 2012 proceeded further.

3. It is this document which was sought to be produced by the petitioner below Exhibit 149 along with the list. In the application it is stated that the said document is necessary to substantiate the case of the petitioner and as the respondents' oral evidence has not yet commenced, the petitioner be permitted to produce the document and to adduce appropriate evidence. The application came to be opposed by the respondents by filing their say specifically denying the execution of the document sought to be produced. It was claimed that the said document was a false and fabricated document and there is no explanation as to why the alleged document was not filed on record earlier. As regards the other documents at Sr. No. 2 to 4 of the list which were sought to be produced are concerned, it was stated that these documents were in the custody of the petitioner even prior to the filing of affidavit of evidence.

4. Learned counsel appearing for the petitioner submits that the rejection of the application is erroneous in as much as the Trial Court erred in holding that the document is produced at belated stage. He would further submit that the document at Sr

No 1 came in existence during the pendency of the writ petition before this Court, when the talks of compromise were going on and in the application it is specifically disclosed that document came into existence recently.

5. *Per contra*, learned counsel appearing for the respondents has invited the attention of this Court to the affidavit in lieu of examination in chief filed by the petitioner and in particular to the cross examination of the petitioner, in which the petitioner has admitted that after filing of the suit there was no discussion between the petitioner and the respondents as regards the settlement. He would further submit that inspite of citing three witnesses, the petitioner has failed to examine any of the witnesses.

6. Considered the submissions of the learned counsel for respective parties.

7. The Trial Court has rejected the application for leading additional evidence in respect of the documents which are produced below the list on the ground that in the application neither the date of meeting was disclosed, nor the development which has taken place in the alleged meeting is disclosed. It was further observed that the petitioner was having opportunity to disclose the said aspect of the meeting prior to the completion of examination in chief on 03rd October, 2022 and as such in absence of any material particulars the application came to be rejected.

8. The application for production of the document came to be

filed after notice to produce dated 18.01.2023 was issued to the respondents to produce the original of the document at Sr. No. 1, which is in the hand writing of the respondent No. 2. As the respondents denied the custody of the documents on 18.01.2023, on the same day application came to be filed to produce the documents below the list on record. As far as the other documents which are at Sr. No. 2 to 4 of the list are concerned, learned counsel for the respondents submits that there is no objection for production of those documents as they are the certified copies of the record of the Court about which there is no dispute and for that purpose the petitioner may be permitted to adduce the evidence. The objection appears to be in respect of document which is alleged to have been executed in the hand writing of the respondent No. 2 and which is annexed at page 59 of the Petition. It is not disputed that the evidence of the petitioner has been completed on 03rd October, 2022 and the instant application came to be filed on 18.01.2023.

9. In my opinion at the stage of seeking permission to adduce the additional evidence and to produce the documents an appropriate application has been filed by the petitioner in which the details have been set out. As far as the details of the meeting in which the talks alleged to have taken place is concerned, the same will obviously form part of the deposition. At this stage all that is required to be considered is whether the document is necessary for the proper adjudication of the controversy in issue. It will be worthwhile to note that there is no protraction of the trial and immediately after closing of evidence in October 2022, the application for production of additional evidence was filed. I fail to comprehend as to why

there is any objection for production of this particular document especially when the respondents have no objection to the petitioner's stepping into the box once again and leading additional evidence as regards the other documents in the list which are certified copies of the records of the Court. Considering that the petitioner will be leading additional evidence in respect of the other documents, in my opinion as far as this document is concerned also, petitioner can be permitted to lead additional evidence. This will be subject to the objection, which may be raised by the respondents as regards relevancy or admissibility of the documents which will be considered by the Trial Court on its own merits and in accordance with law. In my opinion, the alleged evidence which has come in the possession of the petitioner during the pendency of the proceedings should not be shut out on technical grounds.

10. In the light of the above, the petition succeeds. The impugned order dated 21.01.2023 is quashed and set aside and the application dated 18.01.2023 stands allowed. Writ petition is allowed in above terms. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23