

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

WRIT PETITION NO.9479 OF 2022

**OMPRAKASH SITARAM AGRAWAL
VERSUS
RUKHMINBAI BADRINARAYAN PALSANIYA AND OTHERS**

...
Advocate for Petitioner : Mr. Anand P. Bhandari
Advocate for Respondent No.1 to 5 : Mr. S.S. Bora, Advocate h/f
Mr. Tapan K. Sant
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JULY, 2023

PER COURT :

1. This petition challenges order dated 25/03/2022, passed by learned 2nd Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-114 in Special Civil Suit No.222/2009, thereby rejecting application filed by petitioner/plaintiff for production of documents on record.

2. The suit is filed by petitioner/plaintiff against respondents/defendants for specific performance of contract. Defendants opposed the suit by filing written statement. Issues are framed by the Trial Court on 03/05/2013.

3. Defendants filed Writ Petition No.13436/2019 in this Court challenging Trial Court's order of permitting plaintiff to produce office copy of the application dated 25/02/1991 and two

power of attorneys dated 05/10/1981 and 07/06/1991. This Court by detail judgment allowed the writ petition and set aside the impugned order to the extent it permitted production of power of attorneys dated 05/10/1981 and 07/06/1991.

4. Plaintiff, thereafter, filed application Exhibit-114 on 03/03/2021 seeking production of news paper containing public notice issued by plaintiff on 10/09/2009, original bill issued by Maharashtra Advertising Agency in respect of said public notice and certified copy of the judgment in Writ Petition No.2854/1995. Defendants by filing say opposed the said application. By the impugned order, Trial Court has rejected the application, thereby refusing permission for production of these documents. Hence, the present petition.

5. Heard learned advocate for petitioner and learned advocate for respondent Nos.1 to 5. Perused the memo of writ petition, annexures thereto and the impugned order.

6. Learned advocate for petitioner by placing reliance on *Chitrakala Fal Dessai Vs. Balu Marathe Alias Mane s/o Jyotiba Marathe, 2006 (6) Mh.L.J. 427* and *Nurallah Kamruddin Veljee Vs. Vishwambhar Kashinath Palekar, 2016 BCI 100*, submits that Trial Court has erred in refusing permission for production of documents. Public notice issued in the news paper and certified copy of the

decision of this Court cannot be said to be manufactured documents. They would assist the Trial Court in deciding the dispute between the parties. Public notice is already referred in the pleadings of the plaintiff. In that view of the matter, production of documents ought to have been allowed by the Trial Court.

7. Per contra, learned advocate for respondents supported the impugned order. He submits that the application seeking production of documents is belatedly filed by the petitioner/plaintiff. He submits that public notice is dated 10/09/2009 and nothing prevented petitioner from producing it along with the list of documents. He submits that the decision is rendered in Writ Petition No.2854/1995, on 28/09/2004 and the application is filed by petitioner on 03/03/2022. The delay caused in filing said application is not properly explained by petitioner and therefore, Trial Court is justified in rejecting the application. There is no merit in the petition and the petition be dismissed with exemplary costs.

8. Admittedly, there is pleading of the petitioner in paragraph No.14 of the plaint, in respect of public notice dated 10/09/2009. Production of certified copy of the order passed in writ petition could not have been disallowed by the Trial Court merely because the same is belatedly produced by petitioner. Reason given for belatedly approaching Trial Court did not appeal to the Trial

Court, and that should not have been the ground to reject production of documents which are going to assist Trial Court in adjudicating the dispute between the parties.

9. In ***Chitrakala Fal Dessai*** (supra), learned Single Judge of this Court has held;

"9. It is pertinent to note that rule 2 of Order 13 requiring good cause to be shown has now been deleted and by amendment sub-rule (3) is added to Order 14 which states that leave of the Court has to be obtained for production of such documents. But even accepting that while persuading the Court to grant leave, a party has to show cause why the documents could not be produced earlier, not a very strict, restricted and pedantic view can be taken of this provision. Ultimately the Court will have to ensure that all documents which assist it to resolve the controversy before it in an efficient manner are available for its perusal. Unless the Court comes to a conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the Court should not generally deny leave to produce documents because ultimately it is always open to the other side to cross-examine the party who produces the documents to establish that the said documents are not relevant or that the case based on the said documents is not true. In my opinion in this case, at this stage, it is not possible to come to a conclusion that the documents at serial Nos. (f) and (j) are manufactured. However, that does not preclude the defendant, if he so desires, to cross-examine the plaintiff and persuade the Court to hold so. In the nature of things, no final opinion can be expressed by this Court on his aspect of the matter at this stage."

10. In ***Nurallah Kamruddin Veljee*** (supra), learned Single Judge of this Court has held;

"7. No doubt, the application is not happily drafted and does not refer to specific provisions of the Civil Procedure Code under which it has been filed. There is also no quarrel about the principle that provisions of Order 7 Rule 14 of C.P.C. and Section 151 of C.P.C. cannot be allowed to be used for filling up the lacunae, as said in the aforesaid case of Bagai Construction, but, at the same time, it cannot be ignored that provision of Order 7 Rule 14 of C.P.C. operate on a much wider plane encapsulating within it all those cases which ultimately go to assist the Court in effectively adjudicating the dispute between the parties. This case is one such case wherein the documents sought to be produced additionally on record are going to assist the Court in doing justice between the parties. The documents which have been sought to be produced are documents of building in question, and they show that the building had some tenants, and one of the tenants was a person named late Yeshwant B. Naik. According to the petitioner/plaintiff, said Yeshwant B. Naik was the original tenant and not the present respondent/defendant. But, it is the case of the respondent that he is the original tenant. In such circumstances, the documents sought to be produced now would go a long way in settling the dispute between the parties in an effective manner, and therefore, this would not be a case of filling the lacunae. It would be a case of assisting the Court to ascertain the truth. The documents would also help to avoid multiplicity of the proceedings. Therefore, I am of the view that notwithstanding defect in the application, the application filed by the petitioner/plaintiff ought to have allowed by the trial Court. The only ground on which the application has been rejected is that in the opinion of the trial Court, there is no provision of law to rely upon the documents. It appears that the trial Court did not understand the relevancy and importance of these documents and therefore, the application has been rejected on the ground not germane to the controversy involved between the parties. The order is arbitrary and goes against settled principles of law and therefore, needs to be interfered with."

11. Both these citations are squarely applicable to the facts

of the present case. The impugned order passed by the Trial Court is, therefore, unsustainable. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 25/03/2022, passed by learned 2nd Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-114 in Special Civil Suit No.222/2009, is quashed and set aside.
- (III) Application Exhibit-114 is allowed, subject to the petitioner paying cost of Rs.15,000/- to the defendants in Trial Court, within a period of two weeks from the date of receipt of writ of this order.

(NITIN B. SURYAWANSHI, J.)