

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11142 OF 2023

Nimba Arjun Mali

.... Petitioner

Versus

Yamunabai Vasant Patil
and others

.... Respondents

.....

Mr. Girish S. Rane, Advocate for the Petitioner

Mr. Mangesh G. Patil, Advocate for Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 07th September, 2023

ORDER :

1. This Writ Petition was heard yesterday and the order allowing the petition was dictated in open Court. At the time of correcting the draft of order, it was realized that certain relevant aspects were missed from consideration, and this petition does not deserve to be allowed. The matter was therefore listed for admission today, and both the learned advocates were heard on merits. Perused the memo of writ petition, its annexures, impugned order and the citations relied on by both the parties.

2. This petition impugns the order dated 28.08.2023, passed by learned Civil Judge, Junior Division, Erandol, below Exhibit-141, in Regular Civil Suit No. 9/2011, thereby rejecting

the application filed by petitioner/defendant No. 1 for production of documents.

3. Suit is filed by respondent No. 1/original plaintiff for partition and separate possession against petitioner and respondent Nos. 2 to 7/original defendants. Defendants filed written statement and opposed the suit. Thereafter amended written statement was filed on 05/03/2011. Issues were framed. Plaintiff filed his affidavit in lieu of examination-in-chief, and the plaintiff is being cross examined by the petitioner/defendant No.1. At this stage, petitioner/defendant No.1 filed Application Exhibit-141 seeking permission to place on record documents in respect of tenancy proceedings before Tahsildar, Erandol, Sub Divisional Officer, Amalner, Maharashtra Revenue Tribunal and this Court in respect of Land Gut No.506 relating to Section 32(G) proceedings of Bombay Tenancy and Agricultural Lands Act, as the said proceedings are against the petitioner/defendant No.1. The said application was opposed by the plaintiff stating that these documents are not mentioned in the written statement and were not filed along with the written statement. When the cross examination of the plaintiff is going on these documents are sought to be produced at belated stage and no

sufficient reason is assigned as to why the documents are sought to be produced at belated stage. Trial Court has rejected the application holding that petitioner/defendant No. 1 was having knowledge about Tenancy Case No. 22/2001, since 2001. Moreover, defendant No. 1 filed his written statement on 19.04.2011 and till date he has not submitted these documents. Trial Court, therefore, was of the view that, if defendant No. 1 is permitted to produce the documents, at this stage, it would amount to miscarriage of justice. Petitioner is aggrieved by this order.

4. Learned advocate for the petitioner assailed the impugned order by relying on *Chanchal d/o Manakchand Sharma and another vs. Gangaram Dajiba Nagare (since deceased) through L.Rs. Ganesh Haribhau Nagare and others*, 2014(5) Mh.L.J., 575, *Mohammed Abdul Wahid vs. Nilofer wd/o Dr. Mohammad Abdul Salim and another*, 2021(3) Mh.L.J. 626, *Nurallah Kamruddin Veljee vs. Vishwambhar Kashinath Palekar*, MANU/MH/0179/2016 and order of Hon'ble Supreme Court in Civil Appeal No. 4096/2022.

5. Learned advocate for respondent No. 1 supported the impugned order by placing reliance on *Vinayak M. Dessai vs. Ulhas N. Naik and others*, 2018(2) Mh.L.J, 348 and

Purushottam s/o Shankar Ghodgaonkar vs. Gajanan s/o Shankar Ghodgaonkar and others, 2012(6) Mh.L.J. 648.

6. On perusal of the record, it is evident that documents which are sought to be produced by defendant No.1/petitioner during the cross-examination of plaintiff are not referred to in the written statement or in the additional written statement filed by defendant No.1/petitioner. This fact was discovered while going through the record at the time of finalizing the draft of the order passed yesterday. This aspect is required to be taken into consideration while deciding the present writ petition.

7. Order XIII Rule 1 of the Code of Civil Procedure reads thus:

"1. Original documents to be produced at or before the settlement of issues.- (1) The parties or their pleader shall produce, on or before the settlement of issues, all the documentary evidence of in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory."

It is thus clear that as per sub clause 3(a) of Rule 1 of Order XIII, a document can be produced for cross-examination of the witness of the other party and not for the cross-examination of the party.

8. In ***Purushottam Shankar Ghodgaonkar*** (supra), this Court considered the said provision of sub Rule 3(a) of Order XIII, and held;

"Therefore, on careful reading of the said provisions, would make it abundantly clear that the documents other than the documents as contemplated under Sub Rule (1), the said production can be allowed for cross examination of the witnesses of the other party. On plain reading of the said provision, it is abundantly clear that such production of documents which is at later stage of the proceeding and not prior to the framing of the issues, can be produced in the cross examination of the witnesses of other party but the said Rule does not contemplate that such document can be produced for the cross examination of the party. As rightly contended by the counsel appearing for the petitioner, this Court in writ petition No. 869 of 1997, relying upon the judgment of the Jammu and Kashmir High Court in the case of Union of India (supra) has taken a view that there is

distinction in the term witness and a party to the suit. The party to the suit cannot be equated with the witness and cannot be confronted with a document by casting surprise upon him, particularly when the documents were not filed by the plaintiff along with the list of documents on which he is going to rely upon."

9. In **Vinayak M. Desai** (supra), in similar facts, by considering Order VIII Rule 1-A and Order XIII Rule 1(3)(a), this Court held:

"17. The learned trial Court therefore was in jurisdictional error to disallow the objections raised by the petitioner-plaintiff contrary to the mandate of Order VIII, Rule 1 and Order XIII, Rule 1(3)(a) of the Civil Procedure Code. The Respondents had to follow the mandate as contained in Order VIII, Rule 1 of the Civil Procedure Code and could not seek to produce such documents directly during the cross-examination of the plaintiff which it had to otherwise rely upon in a list of documents as required by law. The learned trial Court therefore committed a jurisdictional error and therefore the impugned Order calls for an interference.

10. The Division Bench of this Court in **Mohammad Wahid** (supra), upheld the decision in **Purushottam Shankar Ghodgaonkar** (supra) and **Vinayak M. Desai** (supra).

11. In the light of above ratio, and the fact that the documents sought to be produced by defendant No.1 during cross-examination of the plaintiff are not referred to in the written statement or amended written statement filed by defendant No.1/petitioner, he cannot be permitted to produce these documents to confront them to the plaintiff, which would be taking the plaintiff by surprise. Admittedly, the plaintiff is not party to the said decisions, which the petitioner is seeking to produce on record.

12. Learned advocate for the petitioner has relied on ***Nuralla Kamruddin Vejee*** (supra), wherein application filed by the petitioner/plaintiff seeking leave of Court to produce additional documents of his witness was rejected. This Court held;

"4. It is now well settled law that the provisions of Order 7 Rule 14 of C.P.C are to be applied not in a technical manner, but, by taking a liberal view. Now, the provision requires that if the document cannot be produced by the plaintiff and the plaintiff seeks to produce some important document at a later stage, only leave of the Court is required to be taken. has been understood to be having a wider connotation and has been interpreted to indicate the wide nature of discretionary power of the Court exercised for the purpose of determining the real controversy. If the Court is of the view that such documents

being produced at a subsequent stage are really required to adjudicate the dispute between parties effectively, the Court would have to exercise its discretion by allowing the production of additional documents. While exercising such a discretionary power, the Court has also to take into consideration the fact of prejudice to the other side.

7. 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 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.....”

This decision since is rendered in different facts is of no help to the petitioner.

13. The petitioner has also relied on order passed by the Apex Court in ***Levaku Pedda Preddamma & Ors. Vs. Gottuumukkala Venkata Subbamma and Anr.*** [Civil Appeal No.4096 of 2022 (@ SLP (C) No. 7452/20220], which reads thus;

"Issue notice.

Mr. Mahfooz Ahsan Nazki accepts notice on behalf of respondent No.1.

Leave granted.

The defendant Nos.2 to 5 are in appeal aggrieved against the order passed by the High Court affirming the order passed by the trial Court refusing to permit the appellant to produce additional documents in terms of Order VIII Rule 1 of the Code of Civil Procedure, 1908.

We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice.

It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.

Consequently, the appeal is allowed. The orders passed by the trial Court and the High Court are set aside. The appellants – defendant Nos.2 to 5 are permitted to file the documents and to prove the same in accordance with law.

Mr. Nazki states that the plaintiffs-respondents should be permitted to lead additional evidence, if any, on the basis of the documents now produced by the defendants. We accept the request. The Plaintiff shall lead additional evidence, if any, before the defendants are given an opportunity to lead evidence to rebut the evidence produced by the plaintiff.

Pending application(s), if any, also stand disposed of.”

In the said order, it is not clear at what stage the defendant's request for production of additional documents was rejected. Therefore, this decision does not assist the petitioner.

14. The case in hand is squarely covered by the decisions in *Purushottam Shankar Ghodgaonkar* (supra) and *Vinayak M. Desai* (supra).

15. For the aforestated reasons, the order passed by the Trial Court rejecting application Exhibit-141, thereby refusing permission to defendant No.1/petitioner to produce documents, cannot be faulted with.

16. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to interfere in the order impugned in the present petition, in extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed. No order as to the costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane