

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4768 OF 2022

Aziz Abbas Mukadam

... Petitioner

Versus

Vijay Kanhaiyalal Oswal and Anr.

... Respondents

— —

Mr. Ajinkya M. Udane for the Petitioner.

Mr. Ranjit Agashe i/by Ms. Namrata Agashe for the Respondent No.1.

— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 26, 2023.

P. C. :

1. The challenge in the petition is to the order dated 26th November, 2019 rejecting the petitioner's application for taking on record certain documents.

2. Heard Mr. Ajinkya M. Udane, learned counsel for the Petitioners and Mr. Ranjit Agashe, learned counsel for the Respondents.

3. Learned counsel appearing for the Petitioner submits that the earlier Advocate representing the Petitioner had been handed over all the documents, however, the same were not filed and as such, upon

change of the Advocate, the documents are now sought to be filed. He would further submit that alongwith those documents, which were earlier handed over to the previous advocate, the Petitioner now seeks to bring on record the revenue documents which were available recently. He draws support from the provisions of Order 8 Rule 1A, and would submit that the same enables the Trial Court to grant leave to place the documents on record, which ought to have been produced at the time of the filing of the written statement. He assails the order of the trial Court on the ground that the Trial Court has not considered the documents which are sought to be produced and to which a reference has been made in the written statement. He draws attention of this Court to paragraph 5 of the written statement which states that the defendant no.1 had cancelled the Power of Attorney given to the defendant no.3 and as such, the transactions which were entered into by the defendant no.3 and the plaintiff is not binding on the defendant no.1. In support of his submissions he relies upon the decision of the Apex Court in the case of **Sughandhi (Dead) By Legal Representatives and Antoher Vs. P Rajkumar represented by his power agent Imam Oli**, reported in **(2020) 10 SCC 706**.

4. *Per contra*, learned counsel appearing for the respondent-

plaintiff submits that perusal of the written statement would indicate that no reference has been made to the documents which are now sought to be produced. He further submits that the provisions of Order 8 Rule 1-A cannot be pressed into service as great prejudice would be caused to the plaintiff as his cross-examination is over. He would further submit that the supervisory jurisdiction under Article 227 of the Constitution of India may not be exercised in the present case.

5. Considered the submissions.

6. If we peruse written statement there is fleeting reference to the Power of Attorney. The written statement which into runs seven paragraphs, does not make reference to any of the documents which are now sought to be produced by the defendant. The trial Court while considering the application has considered the documents which were filed by the defendant which are 31 in number and has observed that some of the documents were in existence prior to the filing of the written statement and that some of the documents were prepared by the defendant no.1 himself. The trial Court also observed that some documents are sought by the defendant no.1 under the Right to Information Act, 2005 in the year 2003. After examining the

documents which are sought to be produced on record, the trial Court has held that the documents which are sought to be produced have not been referred in the pleadings and that the defendant wants to set up a new case with the help of those documents and as such, production cannot be allowed.

7. The trial Court has passed detailed order after examining the documents which are sought to be produced on record and taking into consideration various decisions in that respect. The trial Court has also considered that the evidence of the plaintiff is completed and as such, the plaintiff would be put to surprise if the documents are produced. The submission of learned counsel for the Petitioner that the trial Court has not considered the documents, as to whether the same was referred in the written statement cannot be accepted, in view of the specific findings in that respect by the trial Court. The reliance placed on the decision of the Apex Court in the case of *Sughandi* (supra), does not assist the case of the Petitioner for the reason that in the facts of that case the defendants had recently traced the documents, and as such, could not have produced alongwith the written statement. In the present case, the trial Court after considering the documents which are 31 in number have held that these

documents are necessary prior to the filing of the written statement. The only contention which can be seen from the application is as regards the revenue entries, which are claimed to have come in possession of the defendant recently. However, there is no reference to those revenue entries in the written statement.

8. In view of the above, there is no infirmity in the order of the trial Court. This Court is not inclined to exercise jurisdiction under Article 227 of the Constitution of India to interfere with the order.

9. The writ petition being devoid of merits stands dismissed.

(Sharmila U. Deshmukh, J.)