IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3434 OF 2019

Horizon Developers through Partner ... Petitioner
Versus
Abhay Suryakant Khinvsara and Ors. ... Respondents

— —
Mr. Girish R. Agrawal for the Petitioner.
— —

CORAM : SHARMILA U. DESHMUKH, J.
DATE : July 24, 2023.

P. C. :

1. The challenge in the petition is to the order dated 6th December, 2017, rejecting the petitioner's application under Order 11 Rule 14 of the Code of Civil Procedure, 1908 (for short, "CPC") seeking a direction to the Respondent no.1 to produce his income tax returns for the year 2013 till the year 2015.

2. Heard learned counsel appearing for the Petitioner.

3. Learned counsel appearing for the Petitioner submits that the suit in question is instituted for specific performance of oral agreement of sale. He would further submit that initially the

transaction which was entered between the parties was in respect of development of the property as against a sum of Rs.35 lakhs was paid. He would further submit that subsequently, there was an oral agreement between the parties, wherein it was agreed that the property would be sold at Rs.4 Crores and the sum of Rs.35 lakhs paid earlier will be treated as earnest money. He would contend that in the written statement the Respondent no.1 has taken the defence that the sum of Rs.35 lakhs had been taken as a loan from the petitioner. He would further submit that in view of the specific defence being taken it was necessary to direct the defendant to produce the documents under the provisions of Order 11 Rule 15 of the CPC.

4. The Petitioner seeks production of the documents i.e. income tax returns of the defendant no.1 in order to prove its case that the amount was not given as a loan but has been given as earnest money. The provisions of Order 11 Rule 14 provides that it shall be lawful for the Court during the pendency of the proceedings, to order the production by any party relating to any matter in question in such suit as the Court shall think right. In the present case, considering that the suit in question was for specific performance of an agreement of sale the trial Court has rightly observed that the pleadings do not mention about income tax returns of the defendant no.1 and also in

the application the purpose for the direction to defendant no.1 is also not reflected.

5. The proceedings in question have been instituted seeking specific performance of the agreement in which a defence has been taken that the amount in question has been given as loan. It is open for the Petitioner during the cross-examination to put appropriate questions regarding the amount which has been paid and to call upon the defendant to produce the income tax returns, to show that the amount has been paid as loan. At this stage, in exercise of powers under Article 227 of the Constitution of India, I am not inclined to interfere with the discretion which has been exercised by the trial Court which has held that the pleadings nowhere mentions as to reason for the production of income tax returns.

6. In that view of the matter, writ petition stands dismissed.

(Sharmila U. Deshmukh, J. .)