

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 15447 OF 2022

Shashikant Suvarna Bengre

..Petitioner

Versus

Vishwanath K. Suvarna

..Respondent

Mr. Santosh Musale for Petitioner.

Ms. Samruddhi Ghadigaonkar i/b. Ashutosh Kale for Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 10 APRIL 2023

PC :

1. In this writ petition, the Petitioner is challenging the order dated 05/07/2022 passed below Exhibit-92 in Special Civil Suit No.211 of 2010, passed by 2nd Jt. C.J.S.D., Kalyan, whereby the Petitioner's application for setting aside the evidence close order dated 27/11/2021 was rejected. The Petitioner was the original Defendant in the said suit. The Respondent was the original Plaintiff.

2. Heard Shri. Santosh Musale, learned counsel for the Petitioner and Ms. Samruddhi Ghadigaonkar, learned counsel for the Respondent.

3. The suit was filed by the Plaintiff for specific performance of the oral agreement of October 2005 and for declaration that the said agreement was valid.

4. Learned counsel for the Petitioner-defendant submitted that the flat in question which is the subject matter of the said suit was purchased by him in the year 2008 itself. The agreement was executed between the original owner and the present Petitioner-defendant on 22/12/2008 and, therefore, he could not have sold it either through oral agreement or otherwise to the Plaintiff. He submitted that the defendant has filed criminal prosecution against the Plaintiff vide R.C.C.No.550 of 2012 in the court of J.M.F.C., Kalyan, under sections 406, 447, 448, 506 and 341 of the I.P.C. He submitted that, the said agreement dated 22/12/2008 was annexed to that complaint and, therefore, he could not produce it in the civil suit filed by the plaintiff against him.

5. Learned counsel for the Plaintiff submitted that the Petitioner-defendant is simply prolonging the progress of the suit. The suit is pending since 2010. She relied on her affidavit in reply,

in which, it was mentioned that the Plaintiff had closed the evidence on 02/07/2019 and from that point onwards the matter is prolonged by the Defendant. The learned trial Judge in the said suit has also observed that the application below Exhibit-92 was not granted because the matter was old and the application was moved by the Defendant much later in March 2022, when the evidence close order was already passed in November 2021. Learned trial Judge also observed that, the affidavit of evidence was not annexed to the application and on this ground the application below Exhibit-92 was rejected by the impugned order dated 05/07/2022.

6. Learned counsel for the Petitioner submitted that, as of today, he is in possession of the original agreement dated 22/12/2008 and he is in a position to submit it through the evidence in the trial Court immediately on the next date.

7. Considering this statement, the present petition can be allowed. It is important to note that the said agreement dated 22/12/2008 has importance in the context of the suit which is

pending before the learned trial Judge. There is substance in the submission of learned counsel for the Petitioner-Defendant that, if he became the owner of the said flat in the year 2008, there could not have been any agreement in the year 2005 with the plaintiff. Learned counsel also rightly submitted that the defendant has taken recourse to filing of the criminal prosecution in the year 2012 itself and, according to him, the agreement was annexed to the said complaint. Thus, it does not appear to be an afterthought on behalf of the Petitioner-defendant. The agreement was already tendered in the Court of the Magistrate. The said agreement is now available with the Petitioner-defendant. He is willing to produce it as his evidence on the next occasion before the Trial Court. Considering this, in the interest of justice, the Petitioner-defendant can be given one chance to produce the said agreement before the Trial Court.

8. Hence, the following order:

ORDER

- i) The impugned order dated 05/07/2022 passed below Exhibit-92 in Special Civil Suit No.211 of

2010, passed by 2nd Jt. C.J.S.D., Kalyan, is set aside.

ii) The Petitioner is permitted to submit his evidence along with the Agreement dated 22/12/2008 in the said trial.

iii) Both the parties shall co-operate with the early disposal of the said suit.

iv) With these observations, the Petition is disposed of.

(SARANG V. KOTWAL, J.)