

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4922 OF 2022

The Managing Director, Maharashtra State Co-operative Marketing Federation Ltd.,
Mumbai-32 .Vs. Anil Kumar S/o Gokulchand Sharma and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.D. Meghe, Advocate for the petitioner.

Shri V.G. Lohia, Advocate for the respondent Nos.1 and 2.

Ms Shamsi Haider, A.G.P. for the respondent No.3/State.

CORAM : ANIL S. KILOR, J.

DATED : 17/04/2023

1. Heard.

2. The order below Exh.77 dated 07.03.2022 passed by the District Judge-2, Akola in Special Commercial Suit No.1 of 2018, rejecting the application filed by the petitioner seeking permission for filing documents on record, is under challenge in the present petition.

3. Admittedly, the suit is filed under the Commercial Courts Act, 2015 (hereinafter referred to as "the Act of 2015") and therefore, the provisions of Commercial Court Act would apply to it. Rule 7(c)(iii) and Rule 10 of Order 11 of the Act of 2015, are relevant for the decision in the present writ petition and therefore, I am of

the opinion that, it would be appropriate to refer the same, which reads thus:

“(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, alongwith the written statement or with its counter-claim if any, including –

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only –

(iii) handed over to a witness merely to refresh his memory.”

“(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant’s power, possession, control or custody and not disclosed alongwith the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure alongwith the written statement or counter-claim.”

4. The Coordinate bench of this Court in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Pvt. Ltd.*¹, had an occasion to consider the provision of Rule 10, Order 11 and while considering the said provisions, this Court has held that, reasonableness of a cause depends upon the facts and circumstances of each case. However, looking at object and reasons of the Act of 2015, sheer ‘oversight’ on the part of Bank, in not disclosing document along with Written Statement, would not furnish ground to grant leave.

¹ W.P.No.11329/2022 d.o. 10.11.2022

5. In the present matter, if the application moved by the petitioner seeking permission to file documents on record is perused, it will be revealed that no reasons have been stated in the application for producing the documents at the belated stage.

6. Rule 10, Order 11 of the Act of 2015 does not permit to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter claim, except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter claim.

7. In the present matter, the petitioner/defendant No.2 failed to show any reasonable cause for non-disclosure of documents along with the written statement.

8. The learned trial Court while rejecting the application has categorically observed that, at belated stage, the permission cannot be granted to defendant No.2, considering the provisions of Act of 2015. Hence, I do not find any error committed by the learned trial Court in rejecting the application.

Accordingly, the writ petition is **dismissed**.

JUDGE