



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4161 OF 2024

Pratibha Santosh More

VERSUS

Yashwant Shivaji Shinde

Mr. M. S. Kulkarni, Advocate for petitioner

Mr. M. H. Patil, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 26th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to the order passed by the trial Court vide Exh. 87 dated 01.03.2024 whereby the trial Court has rejected application filed by the plaintiff for issuance of witness summons to the Bank Officer to produce documents and lead evidence.

2. Learned counsel for the petitioner submits that this suit filed by the petitioner/plaintiff is for specific performance of contract. According to him, it is specifically pleaded in the plaint about the plaintiff having paid sum of Rs. 2,82,580/- by two cheques. Thus, the evidence of bank officer is relevant and hence the order impugned deserves interference.

3. Learned counsel for the respondent vehemently opposed the

petition by contending that the respondent/original defendant is being harassed for last 10 years by the petitioner/plaintiff. It is his submission that though it was open for the plaintiff to lead evidence of the bank authorities at the relevant time, no application was made. It is his contention that since the application is filed belatedly, the trial Court was justified in rejecting the same. Without prejudice to his above submissions, it is his contention that if the Court finds substance in the petition, the suit is to be directed to be decided in time bound manner.

4. Perusal of record indicates that suit is for specific performance. There is specific pleading about payment being made by issuing cheques by the plaintiff to the defendant. In such circumstances, examination of bank officers is relevant. Even trial Court is not of the view that the examination of this witness is irrelevant for decision of suit. The application is rejected solely on the ground that the same is filed at belated stage. Though, there is some substance in the contention of the respondent that the application is filed belatedly, however, considering relevancy of the evidence, appropriate cost should have been imposed by the trial Court while allowing the application.

5. As far as the observations of the trial court about the doubt as to whether the record is available with the bank or not is concerned, it is for the witness to make such statement. The counsel for the petitioner,

on instructions, makes statement that this would be the last witness and that hereinafter no witness would be examine by the plaintiff under any circumstances. This statement is accepted as undertaking. Hence there is no possibility of causing further delay in disposal of proceeding.

6. Hence petition stands allowed subject to petitioner paying cost of Rs. 5,000/- to the respondent. The payment of cost would be condition precedent for allowing application Exh. 87. Application Exh. 87 stands allowed. Trial Court is directed to issue witness summons as prayed by the plaintiff. Trial Court is directed to decide special Civil Suit No. 7 of 2014 expeditiously, and in case within a period of 6 months from the date of this order.

(R. M. JOSHI, J.)

bsj