

Talwalkar

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

WRIT PETITION NO. 5419 OF 2024

Hiren Jaswant Rajani.	.. Petitioner
Versus	
M/s. Evershine Builders Pvt. Ltd.	.. Respondent

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- Ms. Pushpa Ganediwala, a/w. Anshu Agrawal, Aafreen S. Shaikh h/f. Ms. Krupali H. Rajani, Advocates for Petitioner.
- Mr. Karl Tamboli a/w. Karan Bhinde, Moni Thevar i/b. Ganesh & Co., Advocates for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 4, 2024.

P.C.:

1. Heard Ms. Ganediwala, learned Advocate for Petitioner and Mr. Tamboli, learned Advocate for Respondent.

2. The present Writ Petition impugns order dated 10/8/2023 passed by learned trial Court in Application filed below Exh. 224 by Defendant who is now the sole Defendant in the suit proceedings. Application is filed under the Provisions of Order 18 Rule 3(A) of the Code of Civil Procedure, 1908(for short "CPC"). The issue in the present Writ Petition is very narrow. Order 18 Rule 3(A) of the CPC is reproduced hereunder for immediate reference :

"ORDER XVIII

Hearing of the suit and examination of witnesses

1.

2.

3.

3A. Party to appear before other witnesses.—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”(Emphasis supplied)

3. The above provision delineates that where a party himself wishes to appear as a witness, he shall so appear before (emphasis supplied) any other witness on his behalf has been examined. It also gives a discretion to the Court to record the reasons if the said witness has to appear as his own witness at a later stage. The Defendant has furnished his list of witnesses to be examined before the trial Court. Application is made by him to seek permission of Court to examine witness Nos. 1 to 3 and 5 at the outset before his deposition. These four witnesses whom Defendant desires to examine before himself are statutory officers of the Government i.e. State Government as well as Central Government. One is the Conservation Assistant of the Archaeological Survey of India, second is the Tahsildar of Vasai and third is Officer in the office of the Town Planning Authority. What is gathered from the above and as delineated by the learned trial Court in paragraph-4 of the impugned Order is that all the aforesaid three witnesses are desired to be examined by Defendant for production of

particular specific statutory public documents. The nature of documents are also incidentally delineated in paragraph-4 of the impugned order.

4. *Prima facie*, it is seen that the nature of documents which is specifically noted by the Court are public documents and they available in the public domain. That apart, Defendant can also apply for seeking a certified copy of the said documents and produce the same as and when he himself deposes and enters into witness box for his evidence. Time and again this Court has deprecated the practice of issuing witness summons for production of documents (which are public documents) to Government Statutory Officers and summon them to court for producing those documents in private lis matters. Considering that the purported documents are all public documents, certified copy of the said documents can be obtained and they can be produced. Certified copies of public documents are admissible in evidence under section 61 read with section 62 of the Indian Evidence Act, 1872. The learned trial Court after considering the application filed by the Defendant has considered and delineated the aforesaid ground itself. In fact, the trial Court has been charitable to the Defendant in noting that even if there is a necessity felt to examine the witnesses in the list of witnesses given by the Defendant, they can still be examined but only after the evidence of Defendant is over. The satisfaction of the Court is clearly expressed as required under the provisions of Order 18

Rule 3(A) of the CPC in adhering to the principle which is stated therein. Once the Defendant desires to examine himself as witness of fact and gives his name in the list of witnesses the provisions of Order 18 Rule 3(A) of the CPC will have to be adhered to unless and otherwise so delineated by the Court. In the present facts and circumstances and in view of what is observed herein above as also delineated by the learned trial Court in paragraph-4 of the impugned Order, there can be absolutely no reason to interfere with the order passed by the learned trial Court as the said order is passed correctly in law. Though the learned trial Court has also given its reason on the merits of the matter, that may not be necessary to decide the validity of the Order dated 10th August 2023 before me today. Undoubtedly, as opined by the learned trial Court, the provisions of the Order 18 Rule 3(A) confers a discretionary power and if the trial Court has given its imprimatur in that regard, no fault can be found with the same. What is crucial and significant in the present case is that the witnesses referred to by Defendant in the Application are not witnesses of fact qua the suit proceedings and merits of the matter, but merely production witnesses. The Order dated 10th August 2023 is therefore required to be sustained. Resultantly, the Writ Petition fails.

5. Since the suit has been pending since long, Mr. Tamboly, learned Advocate draws my attention to the order dated 31st July 2024 passed in a companion Writ Petition filed by the same Petitioner being

Writ Petition No. 6429 of 2024. He would submit that the suit has been directed to be expedited by this Court. The Trial Court shall take cognizance of the above order.

6. In view of the above, Writ Petition stands dismissed.

[MILIND N. JADHAV, J.]

Talwalkar

RAVINDRA
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AMBERKAR

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signed by
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