



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8146 OF 2023

Jaisingh Vinayaksingh Gaharwar,
Aged 51 years, Occ. : Business,
R/o. Opp. Akola Urban Bank,
Ganjward, Chandrapur,
Tah. & Dist. Chandrapur.

.... PETITIONER.

// VERSUS //

Sundersingh Vinayaksingh Gaharwar,
Aged 55 years, Occ.: Business,
R/o. Opp. Akola Urban Bank,
Ganjward, Chandrapur,
Tah. & Dist. Chandrapur.

.... RESPONDENT.

Shri H.V.Thakur, Advocate for Petitioner.
None for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 08, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the petitioner. None for the respondent, though served long back.

2. **RULE.** Rule made returnable forthwith. Heard finally.

3. In a suit for Rendition of Accounts an application was moved by the petitioner for direction to the plaintiff to produce documents and provide the relevant details vide Exh.127. The said application filed by the petitioner-defendant No.3 came to be allowed vide order dated 16/08/2023 and the plaintiff was directed to produce the Account Statement and details of the Banks. The plaintiff, however, failed to comply the said order and therefore, another application was filed by the defendant No.3 i.e. the application Exh.135 for direction to the Bank to produce the necessary entries. The said application came to be rejected vide impugned order dated 12/10/2023. Hence, this petition.

4. I have perused the record and the impugned order.

5. From the record it is evident that while allowing the application Exh.127 the learned trial Court has observed that as the plaintiff has admitted that his account was in existence in the banks referred in the said order and the entries in the said bank account during the period mentioned in the order. Therefore, the learned trial Court has observed that no harm or prejudice will be caused to the plaintiff if the statements of the banks for the period mentioned in the order, will be

filed on record. However, the plaintiff failed to produce all the relevant statements on record which prompted the petitioner to file an application Exh.135 for direction to the banks to produce the relevant entries. This was done by the petitioner during the evidence of the plaintiff so that he may confront the relevant entries during the evidence of the plaintiff. However, the learned trial Court has observed that such statements can be referred to by calling the concerned officer of the Bank and rejected the application.

6. There is no doubt that the concerned officer can be called as a witness by issuing witness summons and such statements can be produced on record. However, the Court has not considered that the application was moved during the cross-examination of the plaintiff and once the cross-examination of the plaintiff is over the petitioner has no occasion to confront such documents to the plaintiff and it may cause prejudice to the petitioner.

7. In the circumstances, I am of the opinion that the learned trial Court has committed error in rejecting the application Exh.135. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 12/10/2023 passed below application Exh.135 by 4th Joint Civil Judge Senior Division, Chandrapur in Regular Civil Suit No.52 of 2017 is hereby quashed and set aside, consequently the application Exh.135 is allowed.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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