



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

Writ Petition (WP) No. 8163 of 2023

Diwanchand S/o Tharumal Kewalramani

Versus

Shri Moizbhai Bandeali (Dead) 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 Rohit Sharma, Advocate for the petitioner.

Shri Vinay V. Sharma, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 13th FEBRUARY, 2024.

Heard.

2. This writ petition takes exception to the order dated 2nd December, 2023 passed by the Additional Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 330 of 2015 praying the respondent/plaintiff to file document on record during the cross examination of the defendant.

3. The suit pertains to landlord tenant dispute whereunder the respondent/plaintiff is claiming possession under Section 16(1)(a)(b)(g) and (n) of Maharashtra Rent Control Act, 1999. The plaintiff during the cross-examination of the respondent sought

to produce three documents one Akhiv Patrika and two sale-deeds to point out that the tenant is having alternate accommodation. The said application came to be allowed vide impugned order which is the subject matter of this writ petition.

4. I have heard learned counsel for the respective parties.

5. Shri Sharma, learned counsel for the petitioner submits that in absence of any pleadings if any evidence is produced the same cannot be permitted. It is submitted that there are no pleadings made in the suit in respect of the documents which are produced by the plaintiff. He, therefore, submits that the learned trial Court has committed error in allowing the plaintiff to file documents at the stage of cross-examination of the defendant. For this purpose he has placed reliance of Co-ordinate Bench of this Court in the case of Central Bank of India, Bombay Vs. Sion Bakers and Confectioners Private Ltd., Bombay and others¹.

6. It is further submitted that third document i.e. sale-deed dated 11th June, 2007 is not related with the defendant, as he signed it as a power of attorney holder and not as purchaser. He, therefore, submits that the learned trial Court committed error in allowing the

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application Exhibit 139. He, accordingly, prays for quashing and setting aside the impugned order.

7. On the other hand, learned counsel for the respondent submits that there are pleadings and in support of it, the documents were produced and it was rightly allowed by the learned trial Court.

8. It is further submitted that, the second sale-deed dated 11th June, 2007 is also relevant for the purpose that though the defendant has signed it as a power of attorney holder of the vendor, however, one of the purchasers is the wife of the defendant.

9. In support of his contention, learned counsel for the respondent has placed reliance on the judgment of Hon'ble Supreme Court in the case of Mohammed Abdul Wahid. Vs. Nilofer and another passed on 14th December, 2023 in Special Leave Petition No. 14445 of 2021 and the judgment of Pandharinath L. Bhandari Vs. Bharti Trimbak Bhandari and others, passed by the the Coordinate Bench of this Court vide order dated 24th March, 2021 in Writ Petition No. 1091 of 2020.

10. In light of rival contentions of the parties, I have perused the record and the impugned order.

11. As far as the submission of the learned counsel for the petitioner that there are no pleadings in the suit, I am of the opinion that for this purpose

paragraphs 8 and 9 would be relevant to refer to, which read thus:

“8. The plaintiff has let-out the suit shop blocks/tenaments to the defendant with an understanding whenever the defendant will get other premises or he purchase any commercial property of his own or start his business some were else convenient to him, in the nearby locality he will vacate the suit shop(s)/tenaments of the plaintiff. The plaintiff, repose the faith on the words of defendant, further let-out, his premises one after another. The plaintiff submits that the defendant has purchased/acquired another premises and carrying on his business therein but reluctant to vacate the suit shop blocks and now offered the plaintiff sale the suit shop(s)/tenaments, to him.

9. That the plaintiff has no other commercial premises, in the city of Nagpur of his own apart from the suit shop blocks/premise, which he could deliver, his sons and grandson(s) to carry on their business, instead of carrying on business, in rented shop, above referred. The suit shop block(s) are most suitable for the plaintiff and his sons and grandson for their business, in the suit building/premises. The plaintiff is not having any other vacant premises to use for commercial purpose and to settle the business of his sons and grandsons, within the city of Nagpur. The plaintiff is at present running 77 years of age and considering is old age and continuous ill health, he is not able to find any other suitable and convenient place for the business of his sons and grandsons other than the suit shop block(s)/tenament.”

12. After going through the above referred paragraphs, I am of the opinion that sufficient pleadings are made by the plaintiff in support of his case that the defendant has alternate accommodation. Moreover, the object and purpose of pleading is to enable the adversary party to know the case it has to meet.

13. Admittedly, the present suit is between the landlord and tenant and the above referred pleading demonstrate that the case of the plaintiff is that the plaintiff needs the suit premises for his bona fide need and at the same time the tenant has alternate accommodation. Therefore, though there is no pleadings in respect of the documents sought to be produced, the purpose for which the plaintiff sought to produce those documents are sufficiently pleaded in the suit. Therefore, it cannot be said that the object and purpose of pleading to enable the adversary party to know the case, has not achieved.

14. As far as the objection to the production of sale-deed dated 7th June, 2007 is concerned, it is the case of the petitioner that he or his wife are not the purchaser but he signed as power of attorney and his wife as a consenter to the said document.

15. Since this argument is available to the petitioner to make at the relevant stage i.e. at the time of final argument whereupon, the Court may decide the relevancy of the said documents, I do not want to go into the said issue.

16. The Hon'ble Supreme Court of India in the case of *Mohammed Abdul Wahid Vs. Nilofer Wd/o Dr.*

Mohammad Abdul Salim and another (supra) has held thus:

“26. To conclude the issue at hand – The freedom to produce documents for either of the two purposes i.e. cross examination of witnesses and/or refreshing the memory would serve its purposes for parties to the suit as well. Additionally, being precluded from effectively putting questions to and receiving answers from either party to a suit, with the aid of these documents will put the other at risk of not being able to put forth the complete veracity of their claim – thereby fatally compromising the said proceedings. Therefore, the proposition that the law differentiates between a party to a suit and a witness for the purpose of evidence is negated.

27 to 31....

32. In light of the above discussion, and the answer in the negative to the first question before this court, meaning thereby that there is no difference between a party to a suit as a witness and a witness simpliciter- the second issue in this appeal, in view of the provisions noticed above, production of documents for both a party to the suit and a witness as the case may be, at the stage of cross-examination, is permissible within law.”

17. The Coordinate Bench of this Court in a case of *Padharinath L. Bhandari Vs. Shri Bharti Trimbak Bhandari and others* (supra) which read thus:

6. Heard. Learned Counsel for the parties. Question arising for consideration; are

a. Whether scheme of Code of Civil Procedure, 1908 (CPC for short) interdicts, the parties to the suit from confronting the witness of adverse party with a document, not on the Courts’ record, but shown or produced to the witness for the first time in his cross-examination ?

b. The next question is: the party, which has otherwise failed to file documents at appropriate stage could be permitted to bring on record the document through evidence of the witness of adversary by putting or confronting him with such document?

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8. Thus, to be stated that the provisions of Order-7 Rule-14(4), Order-8 Rule-1 (A)(4) and Order-13 Rule-3(a) of the CPC are exceptions to the Rules, regulating the production of documents by the Plaintiffs and Defendants alongwith the plaint and written statement. To achieve the desired result. While witness of adverse party is examined, if the party to the suit is not permitted to confront the witness with a document, which has not been produced with the pleadings, adverse party cannot test the veracity or impeach the credit of the witness. Thus, the legislation in its wisdom carved out aforesaid exceptions. Thus, in view of explicit provisions of CPC, it cannot be held that the document cannot be produced or shown, for the first time to the witness during the cross-examination, though it was not produced with the pleadings. The first question is answered accordingly.

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10. In consideration of the facts of the case and for the reasons stated, the trial Court shall permit the Petitioners- Plaintiffs to confront the witness of Defendants with a document, if it is relevant and has bearing over a "fact in issue" and not otherwise.

18. From the above referred observations made by the Hon'ble Supreme Court of India and the Coordinate Bench of this Court, it is evident that there is explicit provision under Order VII Rule 14(4) of the Code of Civil Procedure which permits to produce the documents during the cross-examination though it was not produced with the pleading. There is further power to permit the plaintiff to confront the witness of

the defendant with a document, if it is relevant and has bearing over a fact in issue.

19. In the circumstances, I do not find any error committed by the learned trial Court in allowing the application moved by the respondent Exhibit 139. Hence, the writ petition is dismissed.

[ANIL S. KILOR, J.]