



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

WRIT PETITION NO. 1341 OF 2024

Ashok Sahadevrao Tarekar

-Vs.-

Dr.Sudhir Narendra Bhiwapurkar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.Y.P.Kaslikar, counsel for the petitioner.

CORAM : B. P. DESHPANDE, J.

DATE : 4TH MARCH, 2024

P.C.

Heard learned counsel for the petitioner.

2. The challenge in the present petition is the impugned order passed by the First Appellate Court dated 24/11/2021 by which appeals i.e. Regular Civil Appeal Nos.171 and 172 of 2018 were allowed and the suits bearing R.C.S. Nos.220 and 221 of 2013 were restored to the file of the Trial Court. The learned counsel for the petitioner would submit that applications were filed for production of document, which were allowed by the Trial Court. The plaintiff/respondent failed to produce said document in spite of the order and accordingly the petitioner/defendant filed applications for dismissal of suits under Order XI Rule 21 of the Code of Civil Procedure (for short 'CPC'). The learned Trial Court accepting the contention of the defendant, allowed such application and dismissed the suits for non-compliance of the directions.

3. The plaintiff preferred appeals challenging the said orders. The First Appellate Court allowed the appeals and restored the suits.

4. The learned counsel for the petitioner would submit that the First Appellate Court committed error in appreciating the fact and on the point of law and even though a specific direction was given by the Trial Court to the plaintiff to produce document, he failed to do so and thus the suits were rightly dismissed by the Trial Court taking recourse to Order XI Rule 21 of the CPC.

5. The applications filed before the Trial Court by the petitioner/defendant are only for production of document. Such applications were filed under Order XI Rule 14 of the CPC. Learned Trial Court by invoking Rule 21 Order XI of the CPC dismissed the suits. However, the First Appellate Court and rightly so observed that the non-compliance of the order of production of document passed under Order XI Rule 14 of the CPC will attract only an adverse inference to be drawn against the defaulting party and in such circumstances, the question of invoking Rule 21 would not arise.

6. The Order XI deals with two different circumstances, one is discovery and inspection and another is production of document. Rule 21 of Order XI of the CPC deals with the aspect of discovery by interrogatories whereas Rule 12 deals with application for discovery of documents. The wordings of Order XI Rule 21 of the CPC are only with regard to discovery by interrogatories or for discovery of a document. Such non-compliance with order for discovery of a document could be dealt with in Rule 21, however, Rule 14 is separate and distinct. The learned Trial Court it seems,

confused with these two provisions, which was corrected by the First Appellate Court. Such order passed by the First Appellate Court and by invoking right provisions, needs no interference in the supervisory jurisdiction of this Court. Accordingly, there is no merit in the present petition. The same stands dismissed. No order as to costs.

JUDGE