



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

WRIT PETITION NO. 13877 OF 2023

1. Shri Shivchandra S/o Sayabanappa Revate

Age: 59 yrs. Occu; Business;
R/o. Gat No.155, N.H.9,
At and Post Yenegur, Tq. Omerga,
Dist. Osmanabad.

2. Revate Agro Products Private Limited

A company registered under The Companies Act,
1956 as Private Limited Company having its
registered office at: Prayag Chambers, Main Road,
Kalewadi, Pune-411017

Through its Managing Director,
Shri Shivchandra Sayabanappa Revate

Age: 59 yrs. Occu; Business;
R/o. Gat No.155, N.H.9,
At and Post Yenegur, Tq. Omerga,
Dist. Osmanabad.

**...Orig. Defendant Nos.1 & 2.
...PETITIONERS**

VERSUS

1. Shri Gajanan S/o. Bhaskar Nalole

Age: 71 Yrs. Occu: Retired and Agri.
R/o. 391, Narayan Peth, Pune-30.

...Ori. Plaintiff

2. Samruddha Jeevan Foods India Ltd.

Registered Office: Survey No.D1, 13/5, Sambhaji
Nagar, Dhankawadi, Pune-411043.

Corporate Office: 1202/32, "Bhagya" Apte Road,
Opp Hotel Coronet, Shivajinagar, Pune-411004.

Head Office: "Landmark" F.P.578/2B, 3rd Floor, Opp.

Fergusson College, Shivajinagar, Pune-411005.
A Company registered under the Companies
Registration Act, 1956 with The Registrar of
the companies vide incorporation certificate
number CIN-U-15204-PN-2004-PLC-016950,
Through Its Chairman and Managing Director,
Mr. Mahesh Kisan Motewar,
Age; 54 Yrs., Occu: Business,
R/o. Flat No.5, Ganraj Heights,
Kashinath Patil Nagar, Pune, 411043.

**...Ori. Defendant No.3.
RESPONDENTS**

Mr.V. D. Salunke h/f Mr.A. P. Yenegure Advocate for the petitioners.
None for Respondents.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 17th JANUARY 2025
PRONOUNCED ON : 30th JANUARY 2025

ORDER :-

1. Heard the learned Advocates for the petitioners.
2. A challenge in this petition is to an order dated 14th September 2023 passed by the learned Civil Judge, Senior Division, Omerga Dist. Osmanabad, in Application Below Exh.-131 in Special Civil Suit No.10 of 2010. The application was filed by the defendant Nos.1 and 2 for recalling of plaintiff's witnesses and for granting permission to produce

on record the documents and also to examine the witnesses on behalf of defendants. The said application is rejected by way of impugned order.

3. Few facts giving rise to the present petition are as under:

4. The respondents filed a suit against the present petitioners and one Samruddha Jeevan Foods India Ltd. for specific performance of contract and for possession of suit property. It is the case of the respondent No.1/plaintiff that, there was an agreement between the plaintiff and the defendant No.1. Defendant No.1 is an owner of the suit property at Omerga. The Petitioner No.1 is the Chairman and Managing Director of defendant No.2/petitioner No.2. By way of agreement dated 3rd March 2001, the defendant No.1 agreed to sale the land at Gut No.153 to the extent of 62R for a consideration of Rs.7,00,000/-, land Gut No.149 to the extent of 81R and Gut No.151 to the extent of 1H 21R for consideration of Rs.16,00,000/-. The plaintiff agreed to pay Rs.10,00,000/- towards earnest amount. The remaining amount of consideration Rs.13,00,000/- was to be paid at the time of agreement of sale. The possession of the land was to be handed over to the plaintiff

on execution of a sale deed. However later on, the defendant did not execute the sale-deed and therefore a suit was filed.

5. The petitioners/defendants appeared and denied the claim by filing written statement. The suit proceeded further. Issues were framed. Evidence was also led. As the suit proceeded, the evidence also came to be recorded of the plaintiff and the defendants. The defendants later on found that Advocate engaged by them did not effectively cross-examine plaintiff's witnesses and the proceeding was not properly handled. The reasons stated in the application is that the Advocate of the defendants, who was earlier engaged is only trying to pressurize the defendants. The said Advocate did not allow the defendants to come in Court hall when the cross examination was being conducted. The another reason stated was about the quality that the cross examination was not properly conducted etc. They therefore, filed an application as stated above. They specifically prayed for direction to the plaintiff witness Nos.1 and 2 to submit them for further cross-examination. The said application came to be opposed. It is stated that already this Court in writ petition had

granted sufficient time. The cross of defendant's witnesses is also over. Earlier application Below Exhibit-97 for the similar relief has already been rejected by the Court. The evidence of the plaintiff is over long back i.e. on 31st April 2021. This application is filed only to protract the proceedings of the suit.

6. The learned trial Judge after considering the application, say and submissions of the parties, rejected the application. It is recorded that the defendant No.1 has accepted that he was associated with the lawyer for more than 25 years. It is further considered that the application below Exhibit-97 was rejected long back. The cross-examination of PW-2 is also over long back i.e. on 31st August 2021. Even their evidence was closed on 1st August 2022 and this application is filed on 3rd March 2023. No case is made out except making allegations against the earlier Advocate. It is thus concluded that the defendants are only trying to prolong the decision of the suit.

7. So far as the production of document is concerned, it is observed that the nature of documents is not mentioned. No reasons for

production of documents, at this stage, are mentioned in the application. There is no word about due diligence. No reason for examining the defendant's witness by recalling them is not stated. On recording this conclusion, the learned trial Judge rejected the application. Petitioners are thus before this Court.

8. The learned Advocate Mr.Salunke appearing for the petitioners has argued very strenuously. He submits that there were reasons stated for recall of witnesses. The Court has ample powers to allow such application by exercising power under Section 151 and Order XVIII Rule 17 of the C.P.C. It was necessary in the interest of justice and in fairness to allow the application. The trial Court has considered only the stage of the suit however, has not considered that fairness in the trial requires that such applications are allowed. The documents which are produced by the plaintiffs are even exhibited and those will be read in evidence without their being cross-examination by the defendants. Though earlier application Exhibit-97 was rejected that would not come in way of filing similar application for the second time. He submits that, since the

documents subsequently produced by the plaintiff are exhibited, it would cause serious prejudice to the defendants as they are deprived of cross-examining the witnesses on those documents. He thus, prays for allowing the writ petition.

9. On going through the submissions and petition alongwith annexures, it does appear that the earlier application for similar relief was filed below Exhibit-97 that came to be rejected by order dated 11th January 2022. Learned Advocate Mr.Salunke invited attention to the documents which are produced on record and submitted that looking to the nature, it is necessary to prove the contents of these documents. However, the documents are directly exhibited. This court is not much impressed by the said submission as this documents were produced on record prior to filing of an application Exhibit 97. While rejecting application below Exhibit-97, the court has considered and discussed the nature of document. It is specifically observed that, if the plaintiff has produced those documents, it is for the plaintiff to prove those documents. Some of the documents are public documents. Though some

of the documents are exhibited vide Exhibit 84, 89 and 90, those are not proved by the plaintiff. Those documents will have to be proved by the plaintiff in the manner provided under law.

10. This Court has also considered the submissions and the order. When the petitioner has accepted the order dated 11th January 2022 on application below Exhibit-97, by not challenging the same, further similar type of application is made and now an order thereon is challenged in this petition. From the conduct of the petitioner, it is clear that they had accepted the order on Exhibit-97. No grievance was raised. The reasons assigned for making application is only about the conduct of the earlier Advocate. This Court does not find any merit in the said allegations.

11. It is apprehended that the documents are exhibited and will be read in evidence. From the order of the trial Court on application below Exhibit-97, it is clear that the Court has not taken those documents as proved. It is clearly observed that, it is for the plaintiff to prove those documents in accordance with law. If the documents are produced on

record and those are exhibited, it is clear that, the Court will consider the documents only after those documents are proved and as such no prejudice will be caused to the petitioner. Mere apprehension that the trial Court will consider the documents as proved is without any substance.

12. Considering all above, this Court does not find any merit in this petition. Petition therefore stands dismissed. No order as to costs.

[KISHORE C. SANT, J.]

1. At this stage, the learned Advocate for the petitioners prays for continuation of interim relief that is in force.

2. Considering the said request, the interim relief to continue for a period of six weeks from today.

[KISHORE C. SANT, J.]