

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12433 OF 2025

Vijay Chiranjilal Agarwal ..Petitioner

Versus

Amit Tulsidas C Lala Agarwal ...Respondent

Mr. Atul Damle, Senior Advocate, with Keshav Tripathi, i/b Disha
Paresh, for the Petitioner.

Mr. Kailas Dewal, with Yash Dewal and Sham Thakur, for Respondent
No.1.

CORAM: N. J. JAMADAR, J.

DATED : 23rd SEPTEMBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 4th August 2025 passed by the learned Civil Judge, Senior Division, Thane, whereby an Application preferred by the Petitioner-Defendant No.1/1, seeking direction to the Plaintiff to produce the documents under the provision of Order XI Rule 14 of the Code of Civil Procedure, 1908 ("the Code"), came to be rejected.
3. The learned Civil Judge has referred to an earlier order passed on an Application (Exhibit "392") whereby the Petitioner (D1/1) was directed to conduct the cross-examination of the Plaintiff except on the

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point of creation of third party interest in the property known as, “Malhar Theater”.

4. Mr. Damle, the learned Senior Advocate, submitted that the order passed on the said Application (Exhibit “392”) unduly weighed with the learned Civil Judge. In fact, by a subsequent order, on an Application for amendment in the Written Statement filed by the Petitioner (Exhibit “402”), the Petitioner was permitted to carry out the amendment in the Written Statement. Pursuant thereto, the Petitioner (D1/1) has amended the Written Statement specifically taking the ground regarding transfer and creation of third party interest in respect of the Plot No.2 and Plot No. 2A together with construction standing thereon and receipt of consideration of Rs. 54 lakhs vide Cheque bearing No. 037029, dated 8th October 2021, drawn on Axis Bank Limited.

5. In view of the subsequent developments, the documents, of which the production was sought by the Petitioner, and are in the custody of the Plaintiff, are necessary for a just decision of the case, submitted Mr. Damle.

6. I have perused the contentions in the amended Written Statement, especially paragraph 24. There is a contention that, the Plaintiff has created a third party interest in the subject property in favour of Mr. Ramesh B. Shaha and a consideration of Rs. 54 lakhs has

been received. However, there is no reference to a particular instrument under which the alleged third party interest was created.

7. The Petitioner (D1) would undoubtedly be now entitled to cross-examine the Plaintiff in regard to the contentions in amended paragraph 24 of the Written Statement. However, the documents of which the production is sought, except the bank statement, *prima facie* do not stem out of the contentions in the amended Written Statement. A party cannot be compelled to produce documents as a part of a roving inquiry.

8. Mr. Dewal, the learned Counsel for the Plaintiff, submitted that, the Plaintiff has relied upon a letter issued by the bank that, the cheque referred to in paragraph 24 of the Written Statement has not been credited in the account of the Plaintiff maintained with ICICI Bank.

9. In these circumstances, it would be appropriate to clarify that the Petitioner (D1/1) will be entitled to conduct the cross-examination of the Plaintiff with regard to the creation of third party interest in the property referred to in paragraph 24 of the amended Written Statement. The Petitioner (D1/1) would also be entitled to lead evidence to establish the fact that, such third party rights were created and the amount of Rs.54 lakhs was credited to the account of the Plaintiff from the person in whose favour the third party interest has allegedly been created.

10. The Petitioner (D1/1) shall also be entitled to summon the witnesses including bank officials to substantiate the said defence.
11. Subject to the aforesaid clarification, the Petition stands disposed.
12. The trial Court is requested to make an endeavour to hear and decide the Suit as expeditiously as possible.

[N. J. JAMADAR, J.]