



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

WRIT PETITION NO. 1334 OF 2025

Ananta Digambar Diwanji, Aged about 56 years,
Occ: Agriculture, R/o 81, Shivaji Nagar, Nagpur.

PETITIONER

VERSUS

Dr. Ashish Yashwant Mashankar, Aged about 55 years,
Occ: Medical Practitioner, R/o Dr.Mashankar Hospital,
In front of Municipal Corporation School No.5, Belpura
Road, Rajapeth, Amravati – 444 606.

RESPONDENT

Shri Nitin Bhisikar, counsel for the petitioner.
Shri Alok Daga, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 03, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioner takes an exception to the order dated 08.10.2024 passed by the trial Court directing the petitioner-defendant in the suit to produce documents as sought for by the plaintiff.

3. The respondent has filed the suit for specific performance of contract. In the said suit, at the stage of evidence, the plaintiff filed an application at Exhibit 39 seeking direction to the defendant to produce certain documents in the nature of agreement between the defendant with a builder and account statements and passbooks of his accounts. This application was opposed by the defendant however the trial Court by order dated 08.10.2024 allowed the said application.

4. The primary reason for allowing the said application as observed in the impugned order is that documents are in custody of the defendant and the same can be directed to be produced in view of Order XI Rule 12 of Code of Civil Procedure, 1908 (for short, 'the Code').

5. Shri N.R. Bhisikar, learned counsel for the petitioner vehemently submitted that there is no foundation in the plaint and there are no contentions about any of the documents sought to be produced and only because the documents are in the custody of the defendant, the same cannot be directed to be produced. He submitted that although the Court is empowered to direct the parties to produce documents under Order XI Rule 12 of the Code, the need and relevance of the documents for deciding the controversy has to be appreciated. He submitted that by the impugned order, the trial Court has specifically observed in paragraph 6 that *though the documents have no direct concern with the suit but the documents are relevant for deciding the real question in controversy between the parties*. He submitted that the documents demanded by the plaintiff are the personal documents of the defendant and his wife and are not at all relevant for deciding the controversy involved in the suit for specific performance of the contract.

6. As against this Shri Alok Daga, learned counsel for the respondent justified the impugned order by inviting attention to the pleadings in the written statement and submitted that the defendant has raised contradictory pleas and therefore the documents are necessary to be brought on record

to ascertain the factual position. He also submitted that the defendant has suppressed the documents and no prejudice would be caused to the defendant if the documents are produced on record.

7. While considering the controversy, it has to be seen that the application for direction to produce the documents is filed by the plaintiff after the evidence in the suit has started. By this application, the plaintiff had sought for direction to the defendant to produce the agreement between the defendant and M/s Raghukul Construction Pvt Ltd. executed in 2020-21, the account statements and passbooks of all the accounts held by the defendant in his individual name as well as in joint name with his wife so also the account statements and passbooks of the accounts held by his wife Darshana Anant Diwanji. It has to be noted that the suit filed by the respondent is for specific performance of contract with respect to the agreement dated 06.02.2021. There are no pleadings on record showing the need or relevance of the documents sought to be produced. Although these documents are in the custody of the defendant, it is crucial to note, whether production of these documents is necessary for deciding the actual controversy involved in the suit. Pertinently, the trial Court has itself observed in the impugned order that those documents have no direct concern with the suit, however, has directed its production by observing vaguely that they are necessary for deciding the real controversy. It has to be noted that the documents sought to be produced are the personal documents of the defendant and without any justifiable reason he cannot be compelled to file those documents on record.

8. The contention of the counsel for the respondent that in view of the contradictory stand taken by the petitioner-defendant in the written statement, the documents are necessary to falsify his defence, is not appealing because the defendant himself would be put to disadvantageous position in case he fails to produce any relevant documents. Further, contention of the respondent that there will be no prejudice to the petitioner in producing the documents on record also does not appear convincing since the documents sought to be produced are the personal documents of the defendant and do not appear to be necessary for deciding the controversy involved in the suit. It is trite law that the parties have to prove their case on the basis of their pleadings and evidence. As such, the impugned order directing the defendant to produce the documents mainly because they are in the custody of the defendant does not stand to the scrutiny of law.

9. Having regard to the above mentioned factual and legal aspects, the writ petition is allowed and the order dated 08.10.2024 passed by the trial Court below application at Exhibit 39 is quashed and set aside. The application filed by the plaintiff at Exhibit 39 is rejected. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)