

R.C.S. No.14/2016
Gajanan Maharaj Sansthan
-Vs-
Amar Arun Sharma
CNR No.MHBU07-000664-2016.

ORDER BELOW EXH. 231

[Passed on 21.08.2025]

1. This is an application filed by defendant under Order 11 Rule 14 of CPC for giving direction to plaintiff to produce the document on record. Perused application and say filed by Ld. Counsel for plaintiff at Exh.233.

2. The defendant contended that plaintiff witness Dipak Liladhar Patil has adduced the evidence on affidavit in lieu of examination in chief. He is under cross examination. In para No.16 of the evidence the question was asked to him as to whether any agreement was executed prior to Exh.118. The answer given was before that no agreement was executed. Thereafter, he has stated that he is in a possession of agreement and if he is directed by the Court, he can produce the same.

3. The defendant further submitted that he has also stated that after reading the said agreement, he can say with certainty about the agreement. He has further stated that the earlier agreement were for 11 months respectively. He admitted that the shop have been constructed since 1972-1973. The record relating to 1972-73 is available in the office of Sansthan and the witness can produce the same if it is directed by Hon'ble Court. The said record is necessary in order to determine as to whether the defendant and their predecessor respectively have occupied the shop since 1972-73 as a tenant and not as a licensee.

4. The license agreement are also necessary to be produced on record which are in custody of the plaintiff Sansthan, which are necessary for the purpose of determining the status of the defendant. The defendant further contended that the plaintiff witness has admitted that the deposit have been received even in the year 2006 from the defendant. The deposit have been received from time to time from the defendant. All those deposit receipt are not available with the defendant. Some of the receipt can be found out.

5. However, the exact amount of deposit can be ascertain from the record and account maintain by the plaintiff Sansthan. The counter receipt books from the year 1972-73 are necessary to be produce before the Court in receipt of the deposit by the Sansthan from the defendant from time to time. From the said deposit receipt it can be ascertain by Hon'ble Court the status of the defendant as a tenant.

6. As such it is necessary to issue order to the plaintiff to produce all the agreement since 1972-73, the account book and register in which the entries are taken as and when the rent was collected from the defendant and entered into the register so also in the other account maintained by Sansthan. The account are subject to audit every year and therefore the audit report is also necessary to be produce on record in order to determine the question in the suit effectively.

7. The defendant further contended that it is

pertinent to note that in para No.64 of the evidence the witness admitted that, amount received from the person is enter in the account and audit book. He stated that he can produce the said account and audit report if order by the Court.

8. The defendant further submitted that the plaintiff witness admitted in para No.64 that all the shops have been vacated and possession receipt were also prepared and he can produce those receipt if ordered by the Court. In such circumstances by exercising the power under Order 11 Rule 14 the Hon'ble Court is empowered at any time during the pendency of the suit to order the production by any party there too, upon oath, of such document in his possession or power relating to any matter in question in such a suit.

9. As such it is necessary in the interest of justice and to decide the suit on merit to issue direction to the plaintiff to produce all the above referred document for the purpose of further cross examination and till that time the cross may kindly be deferred. Hence, Ld. Counsel for the defendant prayed for giving direction to plaintiff to produce the document referred which the plaintiff witness has admitted to be in a possession of sansthan for the determination of the question involved in the suit.

10. Ld. Counsel for the plaintiff strongly oppose the application by filing reply at Exh.208. Ld. Counsel for the plaintiff submitted that jurisdiction and Order 11 Rule 14 of CPC can be exercised by the Court only if the document is relating to any matter in question in such a suit. The document for which application is filed are not relating to any

matter in the question in the suit.

11. Hon'ble Bombay High Court in the judgment *Bina Digam Vrs. Saras Gopi*, reported in 2022 (2) ALL MR 240 observed in para No.8 & 9 as under:-

8. The provision of Order 11 Rule 12 which deals with the discover and inspection, same empowered of party to suit to pray for direction to other party to the suit to make a discovery on oath of the document which are or have been in his possession or power. It is also necessary for the Court to satisfy itself that document should be relating to any matter in question in the suit. Proviso to Order 11 Rule 12 contemplate that Court may or may not order discovery if, it is of the opinion that same are not necessary for disposing of the suit or for saving cost. Power under Order 11 Rule 14 i.e. for production of document, precede with the procedure contemplated under Order 11 Rule 12.

9. It is also required to be noted that such a document are not required to be used with ulterior motive for causing roving inquiry. As such, duty is cast upon the Court to satisfied itself whether such a document are relevant for the purpose of disposing the suit and not for fishing out the information.

12. The plaintiff further submitted that it is the settled legal position that, the parties can lead evidence limited to their pleadings and parties while leading evidence can not traveled beyond the pleadings. It may be seen that, the plaintiff filed the present suit for eviction and possession under Section 16 (1) (c)(g) of Maharashtra Rent Control Act, 1999. This position is made clear in plaint para No.24, 25, 34 & 36 in the plaint. The plaintiff claimed that, after the expiry

of leave and license of agreement period the defendant handed over possession on 01.05.2012 and made humble request to permit him to continue till 30.09.2012.

13. Plaintiff further submitted that defendant in para No.22 of his written statement denied that, shop block premises is required for plaintiff for bonafide reason as stated therein for the reason of safety of devotee and directed by Government authority and Charity Commissioner. In para No.30 & 31 of the written statement the defendant denied the claim of the plaintiff mentioned in para No.25 of the plaint. On this pleading this Hon'ble Court is pleased to frame issue No.2 & 3 as under :-

2. "Whether plaintiff proves that suit premises is reasonably and bonafidly required for just and proper administration and purpose of the trust" ?
3. "Whether the plaintiff proves that the defendant is blocking the open place available in front of shop made available for the smooth flow of the devotee".

14. So also, following issue No.4, 5 & 6 are framed by this Court on pleading of the party.

4. Whether the terms of leave and license agreement expired on 30.04.2012 ?
5. Whether plaintiff proves that defendant executed receipt of possession to hand over the vacant possession and
6. Whether the plaintiff proves that defendant requested vide letter dated 30.05.2012 to extend the date of handing over possession till 30.09.2012.

15. The plaintiff further contended that in para No.43 of written statement it is specifically pleaded that it is this

obvious that even though the suit shop is in a possession of defendant as a tenant, the false agreement was procured by the plaintiff with a view to evic the defendant from the premises at any time as per whims. Hence, the Court is pleased to issue No.7 as under.

7. Whether defendant proves that the signature on receipt of possession was obtained by coercion, force and by playing fraud.

16. The plaintiff further submitted that the matter relating in question is dependent on the leave and license agreement of the year 2012 and the possession receipt thereof was executed by the defendant. There is a absolutely no any claim of set off or the counter claim by the defendant against the plaintiff in his written statement regarding the alleged deposit. Under these circumstances, the defendant is not entitled to lead any evidence regarding the document on which no reliance is placed by the defendant in their written statement. The plaintiff contended that Order 8 Rule 1(a) of CPC does not permit the defendant to apply to the Court for the direction to the party to produce the document during the pendency of the case. The Order 8 Rule 1(a) which reads as under.

1. "Where defendant based his defence upon a document or rely upon a document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such a document in a list and shall produce in the Court when written statement is presented by him and shall, at the same time delivered the document and copy thereof to be filled with the written statement.

2. When any such document is not in the possession or power of the defendant, wherever possible step in whose

possession or power it is.

17. The plaintiff contended that in view of above mentioned circumstances, the defendant is not entitled to lead any evidence regarding the previous receipt of amount, previous account maintained as there is no dispute regarding any amount previous to the suit except the arrears pleaded in para No.36 of the plaint for which decree is claimed by the plaintiff. The defendant is just prolonging to the trial of the suit. This Court while passing order dated 19.12.2024 observed in detailed in para No.17 as under.

17. This matter is fixed for evidence of PW.2 from 27.02.2024. The PW.2 has filed evidence affidavit and this matter is fixed for cross examination of the PW.2. Instead of taking the cross examination of PW.2 the defendant continue to file an application without any substance.

18. I found the substance in the submission for the counsel of plaintiff as this application is filed only to prolong the matter because the contention raised in the application has already been decided.

18. The plaintiff further submitted that this Court in order dated 19.12.2024 refer to the Hon'ble Supreme Court judgment in Rameshwari Devi & Ors. Vs. Nirmala Devi and taken note of the observation of Hon'ble Supreme Court, this Court specifically held that ratio laid down in the Supreme Court judgment is squarely applicable to the present case or defendant keep on filing previous application which is devoid of the merit and it is also observed that the application appears to be filed to prolong the matter. Therefore, the application is required to be rejected with heavy cost keeping in view the principle laid down by Hon'ble Apex Court in Rameshwari Devi and application filed by the defendant was

rejected with the cost of 3,000/-.

19. The plaintiff further submitted that even after the said order the defendant continue to prolong the matter on 26.03.2025 this Court allowed the adjournment application filed by defendant with the observation that said application is filed to prolong the matter and cost of Rs.500/- was imposed. The conduct of the defendant is such that he is filing frivolous application to prolong the matter. Hence, it is necessary to impose the cost of Rs.20,000/- on the defendant as per the principle laid down by Hon'ble Apex Court in Rameshwari Devi judgment. Hence, Ld. Counsel for the plaintiff prayed for rejection of the application.

20. Ld. Counsel for the defendant filed the written notes of argument on the instant application for production of document at Exh.235. The contention raised in written notes of argument filed by the Ld. Counsel for the defendant would be discussed at appropriate place. Heard Ld. Counsel for the plaintiff.

21. It is a matter of record that the plaintiff which is Gajanan Maharaj Sansthan, Shegaon, has filed the present suit for eviction and possession under Section 16(1)(c)(g) of Maharashtra Rent Control Act with the contention that the defendant was licensee of the suit property and suit property is required by the Gajanan Maharaj Sansthan for bonafide purpose. The defendant resisted the suit on the ground that he is not a licensee of the plaintiff in respect of the suit and he is a tenant of the suit property from 1972-73. From the pleadings of the both parties the issue were framed at Exh.41. Thereafter PW.2 has filed his evidence affidavit at

Exh.151 on 03.11.2023 and cross examination of PW.2 was taken by Ld. counsel for the defendant on 12.02.2025 and 01.03.2025. The question was asked by the Ld. Counsel for the defendant with respect to the record pertaining to 1972-73 to which the PW.2 replied that the record was kept in the office of the Sansthan and he is ready to filed those record if directed by the Court. Consequently on next date defendant file the present application under Order 11 Rule 14 of the CPC with contention that those documents pertaining to 1972-73 kept in the office of the Sansthan as stated by the PW.2 in his cross examination is important to decide the controversy and question between the plaintiff and defendant. The said application was filed under Order 11 Rule 14 of CPC which reads as under-

14. Production of documents- It shall be lawful for the court, at any time, during the pendency of any suit to order the production by any party thereto, upon oath, as such of the documents in his possession or power, relating to any matter in question in such a suit, as the court shall think right, and court may deal with the such documents, when produced, in such a manner as shall appear just.

22. On perusal of Rule 14 of order 11 it show that the court can order the production of any documents by any party which is related to the matter in question in the suit. In the instant case the defendant sought direction to produce the documents and the counter receipt book from the year 1972 and 1973 in respect of the deposit received by the sansthan from the defendant as well as agreement since 1972-73, the account book and the register in which the entries are taken as and when the rent was collected from the defendant and entered into the register so also in the

other accounts maintained by them. The defendant sought the above mentioned documents on the basis of the statement given by the P.W.2 in his cross examination. The defendant in his written statement pleaded that he is a tenant and the licence agreement was executed by using the coercion and undue influence. Defendant nowhere in his written statement stated that he relied on the receipt and account books maintained by the sansthan from the 1972-73. Ld. Counsel for the plaintiff invited my attention to order 8 rule 1-A of CPC which reads as under -

1-A - Duty of the defendant to produce documents upon which relief is claimed and relied upon by him -1. Where the defendant bases his defence upon a documents or relied upon any documents in his possession or power, in documents in a list, and shall produced it in the court when the written statement is presented by him and shall, at the same time delivered the documents and copy thereof, to be filed with the written statement.

2. Where any such documents is not in the possession or power of the defendant, he shall, where ever possible, state in whose possession or power it is.

23. Thus, sub rule 2 of rule 1-A of order 8 of CPC specifically stipulated that it the duty of the defendant to pleaded that when any such documents is not in the possession or power of the defendant, he shall state in whose possession or power it is. The defendant in his written statement did not mentioned anything about the receipt from 1972-73 and those receipts is in a possession of the plaintiff sansthan. Therefore, the defendant cannot seek direction from the court to plaintiff to produce the documents about which P.W.2 has given statement in his cross examination.

The order 8 rule 1-A sub rule 2 bar the defendant from seeking direction to the plaintiff to produce the documents in absence of the pleadings thereof in written statement.

24. It is the contention of the defendant that the documents sought by the defendant are important documents to decide the present suit on merit. The defendant come with the defence that he is a tenant and has been regularly paying the rent from the time when the suit shop was given to him or his predecessor on rent. Defendant in his written statement further averred that the plaintiff sansthan has given the receipt in various formate. Therefore, it can be said that the receipt given by the plaintiff sanstan to the defendant for the rent that he has paid to the plaintiff are presume to be in the possession of the defendant. The defendant can established his claimed on the basis of the receipt given by the plaintiff sansthan as pleaded in the written statement.

25. As I said earlier and it is the matter of record that the defendant moved this application on the basis of the statement given by the P.W.2 in his cross examination. If this application for production of documents on the basis of the statement given by the witness is allowed, it will create the wrong precedent and the cross examination of the witness is unending process as defendant keep on asking the documents related to the previous record and witness continue to say that I can state after reading the document which is not on record. Therefore, this practice of asking the documents based on the statement of the witness is not tenable in the eyes of law specially when there is no pleadings of the documents in the written statement.

26. Ld. Counsel for the plaintiff relied on the judgment of Hon'ble Bombay High Court in Dinadigan Vs. Saras Gopi 2022 (2) All MR 240. The Hon'ble Bombay High Court in Dinadigan observed that power under order 11 rule 14 precedes with the procedure contemplated under order 11 Rule 12 which deals with the discovery and inspection, same empowered the party to suit to pray for direction to other party to the suit to make a discovery on oath of the documents which are or have been in his possession or power. Hon'ble Bombay High Court further observed that it is also required to be noted that such documents are not required to be used with ulterior motive for causing roving inquiry. As such duty is cast upon the court to satisfy itself whether such documents are relevant for purpose of disposing the suit and not for fishing out the information.

27. In the instant suit I am of the view that documents sought by the defendant which is related to the year 1972-73 is not relevant documents as the defendant can established his claim with the document i.e. receipt which is in his possession.

28. Ld. Counsel for the plaintiff contended that it is the settled principle of law that parties can lead evidence limited to their pleading and parties while leading evidence cannot travel beyond pleading. The defendant did not pleaded anything about the documents related to the year 1972-73 and therefore, he cannot seek those documents without the pleadings thereof.

29. Ld. Counsel for the defendant in his written notes

of argument contended that the witness has admitted Kararnama in his possession and he can produced it if ordered by the court and the Kararnama were for 11 months respectively. Therefore, the Kararnama and the documents executed prior to Exh. 118 which are in a possession of plaintiff sansthan are important documents to establish his claim that he is a tenant and not licencee. As I said earlier the defendant did not pleaded in written statement any agreement previous to Exh. 118 and Kararnama. Therefore, the defendant cannot seek direction to the plaintiff to produce those documents on records. So far as the importance of proposed documents sought by the defendant to decide the question in this suit is concerned, the defendant can establish his claim with the receipts and other documents given by the plaintiff sansthan for the rent as stated by the defendant himself in his written statement. The defendant appears to make roving inquiry into the administration of the plaintiff sansthan by seeking those documents pertaining to the year 1972-73. Ld. Counsel for the defendant further contended that the documents is important for proving as to how the premises and shop block which were given in possession of the tenant could be converted from tenant to licency. The defendant has taken the plea in written statement that licence agreement was executed by using the coercion and undue influence on him. Now defendant cannot change his stand that documents in the possession of the plaintiff is important to prove his claim of coercion and undue influence. It is well settled principle of law that plaintiff established his case on his own. Likewise defendant shall also established his claim on his own. By seeking documents from the plaintiff defendant is trying to establish his claim with the help of plaintiff which is not allowed in the eyes of law.

30. Ld. Counsel for the defendant heavily relied on Hon'ble Supreme court judgment in a Shanmugham Vs. Ariya Kshatriya AIR 2012 SC 2010. In above mentioned judgment Hon'ble Supreme Court has explained the scope of section 30 of CPC wherein it is held that under section 30 of CPC it is provided that subject to such condition and limitation as may be prescribed, the court may, at any time either of its own motion or on application of any party makes such order as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatory, the admission of documents and facts and the discovery, inspection, production, impounding and written of documents or other material object producible as evidence. The Hon'ble Supreme Court also referred to the mantra Satyamev Jayate (Truth stands invisible) The Hon'ble Supreme court further observed that those who approach the court must approach it with clean hands and ensuring the discovery and production of documents and proper admission/denial is imperative for deciding civil case in proper perspective. The defendant did not stated as to how plaintiff did not come with clean hands and which documents plaintiff has not produced on record. So far as the observation of Hob'ble Supreme Court in respect of section 30 of CPC is concerned, it is pertinent to note that section 30 started with "subject to such condition and limitation as may be prescribed which means that the production of documents can be ordered only when there is no limitation in the statute. In the instant case order 8 rule 1-A sub rule 2 bars the defendant from seeking direction to the plaintiff to produce the documents in absence of the pleadings thereof and principle of evidence limited to the pleading also prevented the defendant from seeking direction

to the plaintiff to produce the documents which the defendant wants. Therefore, with due respect the ratio laid down in the judgment of A Shanmugham (Supra) is not applicable to the present case.

31. Ld. Counsel for the defendant relied on judgment of Hon'ble Supreme Court in Sasan Gowada Vs. Dr. S.B.Amarkhed and others 1992 AIR SCW 1064. The fact of the judgment relied on by the defendant is different from the facts of the present case. Further the judgment of Delhi High Court in Navin Jindal Vs. M/s. Zee Media Corporation limited 2017 (5) ADR 76 Wherein again the principle of order 11 rule 14 of CPC has been discussed. However, the fact of the above mentioned authority is different from the facts of the present case.

32. In sum and substance of above mentioned discussion the defendant failed to prove that he is entitled to seek direction from the court to the plaintiff to produce the documents based on the statement of the witness in the cross examination specially when there is no pleading of the documents sought by the defendant which is a contrary to the provision of Order 8 Rule 1-A Sub Rule 2. Defendant also failed to establish that documents sought by him is important documents to decide the question in the suit as defendant can establish his claim of tenancy on the basis of the receipt received by the plaintiff sansthan as per the law. The plaintiff sought the costs to be imposed on the defendant for filing frivolous application. But the application moved by the plaintiff is based on the law point and it involves the facts of the case. Therefore, I am not inclined to imposed the costs while deciding this application. In view of above reason I am

not inclined to allow this application and proceed to pass following order.

ORDER

1. This application is rejected.
2. Both party to take note of it.

[N. D. Meshram]
Civil Judge Jr. Dn. Shegaon,
Dist. Buldana.

Date : 21.08.2025.

I, *P. K. Ingle*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.