

MHPU180012402016

**ORDER BELOW EXH. 208**

(Passed on 25.01.2023)

01. This is an application filed by the defendant nos. 01, 04, 05 and 06 to 10 for production of documents to mark them exhibits and to read them in evidence.

02. Plaintiff has strongly opposed and filed his say (Exh. 212). Plaintiff has denied the contention of application of the defendants. He submitted that defendants have till date 11 to 12 times point to point taken cross-examination of the plaintiff and intentionally not completed the cross-examination. The documents want to produce by the defendants are denied by plaintiff. These documents have no connection with the present suit. Documents are false and illegal. On all these grounds he prayed for rejection of the application.

03. Heard Ld. Advocate Shri. Vijayrao Kale for defendant nos. 01, 04, 05 and 06 to 10 and Ld. Advocate Shri. S.N.Yele at length.

04. Perused R & P, it is seen that the suit for specific performance and permanent injunction filed on 09.06.2016 and it is registered on 13.06.2016. Summons were issued to defendant nos. 01 to 10. Defendant no. 05 is appeared and filed his written statement and say vide Exh. 26 on 02.05.2016. Defendant nos. 01 to 04, 05 to 10 have adopted written statement and say of defendant no. 05 vide pursis (Exh. 36) on 20.07.2016. My Ld. Predecessor has framed issues in view of Exhs. 37 and 39 vide Exh. 41 on 03.09.2016. Then suit is pending for evidence of plaintiff. Defendant nos. 01 to 10 have filed application below Exh. 51 on 13.10.2016 for amendment in W.S.. That application was decided on merit on 01.12.2016. Defendants have amended their written statement (Exh. 62). Then defendants have filed application for amendment in written statement for purpose of filing counter claim (Exh. 66). That application was decided on merit on 28.04.2017. It was allowed. Then defendant nos. 01 to 10 have filed their counter claim (Exh. 81) on 11.05.2017. Plaintiff has filed written statement to the counter claim vide Exh. 86 on

17.07.2017. Plaintiff has filed application for rejection of counter claim (Exh. 92). That application is decided on 20.09.2017. Defendants have filed application for condonation of delay for filing independent counter claim vide Exh. 95 which was allowed on merit on 20.09.2017. In view of pursis (Exh. 99) and order below Exh. 95 amended written statement/counter claim of defendants Exh. 81 is filed. Counter claim of defendants have filed at Exh. 100 on 20.09.2017. Plaintiff has filed his written statement to counter claim at Exh. 103. Then on 08.11.2017 issue nos. 08 and 09 were framed. Thereafter, plaintiff has filed application below Exh. 151 for framing additional issues. That application was decided on merits on 02.02.2019 and it is rejected. Being aggrieved by that order plaintiff has filed Writ Petition No. 1519/2019 in the Court of Hon'ble Bombay High Court. That writ was decided on 17.07.2019. It is allowed. Thereafter, additional issue nos. 7 is re-numbered as issue no. 09 and issue no. 09 is re-numbered as issue no. 08 and previous issue no. 8 was deleted. Issue nos. 7a to 7d, 08 and 09 framed on 03.08.2019. Then L. Rs. of defendant no. 04 are brought on record as per order below Exh. 197 on 04.11.2019. The plaintiff has filed copy of amended plaint on 25.11.2019. Summons to defendant nos. 4a to 4d were issued. Then defendants have filed application for amendment in their counter claim (Exh. 204) on 21.12.2019. That application decided on merit on 15.02.2020. Defendants have filed amended copy of counter claim (Exh. 100A). Plaintiff has filed his consequential written statement vide Exh. 209.

05. In the mean time plaintiff has filed his evidence affidavit (Exh. 46), additional evidence affidavit (Exh. 105) and additional evidence affidavit (Exh. 179). On that evidence affidavit further chief examination recorded on 19.01.2019. Defendants have started to cross examine plaintiff on 02.02.2019. Then it was deferred. It was further started on 02.03.2019, 16.03.2019 and 30.03.2019. Plaintiff has cross examined on Exhs. 105 and 179 on 17.08.2019, 21.09.2019 and it is deferred. Then present application is moved by the defendants.

06. Ld. Advocate for the plaintiff has argued that when plaintiff has applied for certified copy of documents from Drug Department under the Right To Information Act (R.T.I. Act), then Asst. Commissioner of Food & Drug Department, Maharashtra State has sent notice to the plaintiff about it and given one website and ID number for collecting aforesaid information to the plaintiff. Defendants have prayed for production of documents which are claimed by them under R.T.I. Act and received those documents which are not given to the plaintiff in spite of application given by the plaintiff to concern department by the Asst. Commissioner of that department. Even no notice is received by the plaintiff calling his say. Ld. Advocate for the plaintiff raised question that how defendants have collected these documents by adopting illegal way. He submitted that the documents are false and relied upon Section 11 of the R.T.I. Act.

07. The suit is now actually pending for further cross examination of the plaintiff by Ld. Advocate of the defendants. The suit is now more than 06 years old. On perusal of plaint and counter claim of the defendants, it shows that suit is filed for specific performance and defendants have asked many questions in respect of Medical Shop and the license taken by plaintiff from the Food & Drug Department and many more.

08. Defendants prayed in the present application that the documents for license for running Medical Shop by the plaintiff be permitted to produce and be exhibited and read in evidence to which plaintiff has strongly opposed. On perusal of counter claim it is the defence of the defendants that they have executed leave and license agreement in favour of the plaintiff on 08.09.2010 for 11 months and possession of 11 feet, 04 inch X 17 feet, 5 inch area is on rent given to the plaintiff for deposit Rs. 30,000/- and Rs. 2,000/- per month license fee with some condition that document was Notarized at Sr. No. 4226/20/6 on 13.09.2010. In that area plaintiff has running Medical Shop and they denied about Possession Agreement to Sell of plaintiff. After completion of a period mentioned in Agreement of

Lease and License, plaintiff has not vacated that place by assuring promises. There are some arrears of license fee i.e. 72,000/- from plaintiff. Defendants have prayed for vacant possession of the suit premises, recovery of license fee of Rs. 72,000/- from plaintiff and injunction against plaintiff. Defendants want to cross examine the plaintiff about the documents on the basis of which plaintiff has obtained the license of Medical Shop running in the suit property. Even though plaintiff and plaintiff's Ld. Advocate have strongly opposed about obtaining documents by the defendants. But if those documents are necessary for settling the controversy between the parties, then production of it is necessary.

09. Considering aforesaid reasons, discussion and nature of controversy between the parties (Plaint and Counter Claim) and reasons mentioned in the present application, stage of suit, age of suit, I pass following order :-

ORDER

1. Application (Exh. 208) is partly allowed.
2. Only production of documents is allowed.

Daund
Dated : 25.01.2023

[**Smt. J.S.Khedkar-Goyal**]
Civil Judge (Jr.Dn.), Daund.
Tq. Daund, Dist. Pune

Vishal Vs. Smita & Ors.

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R.C.S.No.173/2016
Order below Exh.208

:: CERTIFICATE ::

*I affirm that the contents of this P. D. F. file of Order are same word to word,
as per original Order.*

Name of Stenographer : Pankaj D. Jagatap,

*Name of Court : Smt. J. S. Khedkar-Goyal,
C.J.J.D. & J.M.F.C., Daund, Tal. Daund, Dist.
Pune.*

Order Date : 25.01.2023.

Order signed by Presiding Officer on : 25.01.2023.

Order uploaded on : 27.01.2023.