

MHCC020066052023



BEFORE THE DESIGNATED COURT UNDER M.P.I.D. ACT
CITY CIVIL & SESSIONS COURT, MUMBAI
ORDER BELOW EXHIBIT 17
IN
MISCELLANEOUS APPLICATION NO. 716 of 2023
IN
MISCELLANEOUS APPLICATION NO. 106 OF 2006
IN
MPID CASE NO.16 OF 2005

Mr. Taherbhai Q. Ezzuddin and Anr ...Applicants

Versus

M/s. Parasrampuriah Plantation
Limited & others. ...Respondents

Coram : HHJ Abhijeet A. Nandgaonkar
(Court No. 20)

Date : 24.04.2024

Appearance:

Ld. Adv. Siddharth Samantaray for applicant.

Ld. A.P.P. Mrs. Sulabha Joshi for Respondent/State.

Ld. Adv. Prashant Parasrampuriah for respondent No.2.

ORDER

(Dictated and pronounced in open court)

By way of this application, respondent M/s. Parasrampuriah Plantation Limited prayed for issuing summons to Bank of Maharashtra, Alibaug Branch to produce bank statement of PPL A/c No.5411 from 01.12.1994 onward under Section 91 of Cr.PC.

02. The respondent/applicant M/s. Parasrampuriah Plantation Limited (hereinafter referred as 'PPL') prayed that, in view of notice dated 20.03.2024 issued by PPL to Bank of Maharashtra, Alibaug Branch vide letter dated 04.04.2024 sought two weeks time to submit bank statement from 01.12.1994 onwards of PPL A/c. Again vide letter dated 18.04.2024, Bank of Maharashtra, Alibaug Branch has forwarded bank statement from 10.10.1995 onwards of PPL A/c. In the said letter, Bank of Maharashtra has stated that as on date, they could trace bank statement from 10.10.1995 onwards. The same is hard to believe in as much as either complete record are traceable or not traceable, it cannot be in peace meal. The bank seems to be under some pressure, not forwarding statement from 01.12.1994 onwards as the same could reflect payment of Rs.2,40,000/- by Cheque to Vasant Govind Phadke in month of January 1995. Hence, in the interest of justice and larger interest of investors, this Court be pleased to issue summons under Section 91 of Cr.PC to Bank of Maharashtra, Alibaug Branch, District Raigad to produce before this Court, bank statement from 01.12.1994 onwards of PPL A/c No. 5411 by procuring it from Regional and Head Office of Bank of Maharashtra and prayed that application be allowed.

03. Say of the original applicant was called. Ld. Adv. Mr. Siddharth Samantray filed say overleaf application and submitted that application is denied on following grounds :

- (a) Present application is filed merely to delay adjudication of the present application.
- (b) Record of payment does not reflect in statement and present application is futile attempt to waste precious time of this Hon'ble Court. Therefore, present application be dismissed.

04. Ld. SPP filed overleaf application submitted their reply by submitting that prosecution has no objection.

05. Heard Adv. Mr. Prashent Parasrampurua for PPL respondent, Adv. Mr. Siddharth Samantray for original applicant and Ld. APP Mrs. Sulabha Joshi for State. Perused submissions, documents supplied with the application.

06. As per submission of Bank of Maharashtra, Alibaug Branch by letter dated 18.04.2024 informed respondent/PPL that "with reference to the above subject we were asked to provide statement for the account NO.5411 (Parasrampurua Plantation Ltd) for the period of 01.12.1994 to 31.12.1995. In this case we are sorry to inform you that the statement is available only for the period after 10.10.1995 as the systems were not computerized prior to 2007 and data only after 10.10.1995 can be traced as on date. We are hereby attaching the statement after 10.10.1995. Kindly acknowledged and consider". Along with this letter, the Bank has forwarded statement of account of PPL from 10.10.1995 till 19.10.1997. The Investigating Officer also submitted same documents received in response to their letter vide Exh.18.

07. Therefore, respondent/PPL by way of this application is seeking direction to call Branch Manager to produce account statement of PPL from 01.12.1994 onwards. The application came to be moved in M.A No.716 of 2023 filed by Mr. Taherbhai Q. Ezzuddin and Mr. Ibrahimhai Q. Ezzuddin against Parasrampurua Plantation Ltd seeking direction, to vacate interim injunction granted by operation and effect of order dated 07.12.2006 passed in M.A No. 106/2006. After issuing notice to

respondent, the State and respondent PPL who is accused in MPID Case No. 16/2005 filed detailed reply and matter was heard at length.

08. It is pertinent to note that in view of Criminal Writ Petition No. 482 of 2024, order dated 16.01.2024 of Justice Prakash D. Naik, it was directed to decide M.A No. 716/2023 within a period of three months from date of receipt of order. Thus, after hearing matter, when it was closed for orders on 22.04.2024, this application came to be moved.

09. While submitting the necessity of issuing notice under Section 91 of Cr.PC, Ld. Advocate appearing for PPL Mr. Prashant Parasrampuriah brought to my notice the fact in respect of payment of Rs.2,50,000/- by them to Vasant Govind Phadke from whom they have agreed to purchase the disputed property and therefore in order to show the payment has been made as part consideration for that agreement dated 31.12.1994 in respect of agricultural land situated at village Zirad, Survey No.265 having area of 2.21 hectares.

10. Per contra, Adv. for applicant in M.A No.716 of 2023 strongly opposed this application by submitting that, it is nothing but an attempt to collect evidence by putting gun on shoulder of this Court under section 91 of Cr.PC. which never permits to do so, unless the Court thinks it necessary and also about tenability of application, when matter was completely heard and fixed for orders on 22.04.2024 at that time, application has been moved and thus on the count of tenability and maintainability he prayed to dismiss the application.

11. In support of his submission, Ld. Adv. for original applicant of M.A No. 716/2023 relied upon the authority of **Om prakash Sharma V/s CBI reported in 2000 AIR SC 2335** wherein language of section 91 of Cr.PC. has been interpreted as, “ the power conferred under section 91

are enabling in nature aimed at earning the Court or any officer incharge of a police station concerned to enforce and to ensure the production of any document or other things necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the Court by summing a summons or written order to those in possession of such material. The language of section 91 indicates width of powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from stage or point obtained of its exercise commensurately with the nature of proceeding as also compulsion of necessity and desirability to fulfill task or achieve object.

Therefore, it is to be only seen that whether the trial Court has judicially exercised its jurisdiction and thus, it was observed that trial court and also High Court seems to have properly applied their minds by going into nature of documents sought to be summoned, their relevance of nature of consideration to be made at the stage of proceeding before Special Judge, as well as necessity and desirability thereof”.

12. To, counter-blast this submission, Ld. Adv. for PPL have put forth authority of **Rasiklal Manikchand Dhariwal and Anr V/s M.S.S. Food Products 2012 (2) SCC 196** wherein in Para No.92 the Judgment of **Shiv Cotex V/s Tirgun Auto plast Pvt Ltd 2011 (9) SCC 678** has been placed in the action by mentioning para No.16 and 17 as "no litigant has a right to abuse the procedure provided in C.P.C. Adjournments have grown like cancer corroding the entire body of justice delivery system. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no

right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit whatever the plaintiff or the

defendant must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril".

13. Ld. Adv. for original applicant placed reliance on authority of **Karnataka High Court in WP No.28749 of 2015 between B. P. Virupakshamurthy V/s Anita Anilkumar** wherein Judgment of Apex Court in **K.K. Velusamy V/s N. Palanisamy** has been discussed, on the count that, when matter is heard fully and reserved for pronounce of judgment, application moved by plaintiff for appointment of Commissioner was held irregularity. Thus, in the light of this fact and the citation placed into action, it is necessary to mention that when matter is made High Court time bound to be disposed off within stipulated period as directed, it was heard fully by giving due opportunities to all parties to argue the matter and at last it was placed for orders on 22.04.2024. Thus, when the matter is fixed for orders, moving such application for summoning witness is not preferred at appropriate stage.

14. Further, it is the duty casted on PPL who is coming with case that in view of their agreement dated 31.12.1994 they have paid part consideration of Rs.2,50,000/- to their vendors. If it is so, then from 31.12.1994 when alleged agreement came to be in existence, PPL has documentary evidence with them to show payment of part consideration has been made but till filing of this application, no such attempt has been made to place it on record, but was now called under section 91 of Cr.PC to issue summons to Branch Manager to produce

account statement of their own. When Branch Manager has shown inability to produce said documents prior to 10.10.1995 as systems

were not computerized prior to the year 2007 and data only after 10.10.1995 can be traced, Question of directing them to produce bank statement of PPL A/c No. 5411 from 01.12.1994 is beyond capacity of Branch Manager, even if summoned before this Court.

15. Furthermore, language of section 91 of Cr.P.C. clearly empowers Court and investigation officer only to issue such type of directions to call the witness to be examined or to produce the document as required by the respondent/PPL. As observed in the above cited authority of Honble Apex Court.

16. Even this application is nothing but attempt to collect evidence by invoking powers of this Court under section 91 of Cr.P.C. which is not permissible at all. In MPID Act under Section 7(5) permits examination of parties and in all other respects when objection raised has to be proceeded to be investigated by following summary procedure as contemplated under Order 37 of C.P.C. and exercise all powers of Court in hearing suit under the said Court for that objection. Therefore, neither under section 7 of MPID Act, the objection has been raised by the original applicant nor the summary enquiry as contemplated is to be carried out while hearing this Misc. Application when there is no objection raised and required to be dealt by this Court. On this legal count also the application has devoid of substance and merit and required to be rejected. Hence, I proceed to pass following order:

ORDER

1. Exh.17 moved by PPL/respondent Under section 91 of

Cr.P.C. to issue summons to Bank of Maharashtra, Alibaug Branch to produce Bank Statement of PPL A/c NO.5411 from 01.12.1994 onwards stands rejected.

2. Parties to bear their costs.
3. Accordingly Exh.17 in M.A. No. 716/2023 in M.A No. 106/2006 in MPID Case No.16/2005 stands disposed off.

(Abhijeet A. Nandgaonkar)
Designated Judge and
Addl. Sessions Judge,
City Civil & Sessions Court,
Gr. Bombay.(C.R.No.20)

Date : 24.04.2024

Dictated on : 24.04.2024

Transcribed on : 24.04.2024

Checked on : 25.04.2024

Signed on : 25.04.2024

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME
25.04.2024 and 12.30 pm

NAME OF STENOGRAPHER
Mr. Mohit M. Patange

Name of the Judge (with Court Room No.)	HHJ Abhijeet A. Nandgaonkar
Date of Pronouncement of JUDGMENT/ ORDER	24.04.2024
JUDGMENT/ORDER signed by P. O. on	25.04.2024
JUDGMENT/ORDER uploaded on	25.04.2024