

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2799 OF 2023

Sanjay jayram Rahate

...Petitioner.

Versus

Pramila Narayan Gaikwad & Anr.

..Respondents.

Mr. U.S.R. Singh and Mr. C.M. Lokesh for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 17, 2023.

P. C. :

1. Heard.
2. The challenge in the petition is to the order dated 23rd December 2022 rejecting the petitioner's application for filing of additional documents. The suit in question was instituted by the petitioner-plaintiff seeking specific performance of the agreement to sell. The evidence was led and in the cross-examination of DW-1, it was brought out that cheque of Rs.30,000/- was given, however, the same was not encashed. In view of the evidence which has come on record, an application dated 18th August 2022 came to be filed by the plaintiff for the purpose of production of additional document, i.e., the bank statement showing that the cheque which was issued in

favbour of DW-1 was encashed and for the additional examination in chief of the plaintiff, which application came to be rejected by the impugned order.

3. Learned counsel appearing for the petitioner submits that the grounds on which the application was rejected is that there is no pleading in the plaint as regards the payment of Rs.60,000/- and that the plaint avers that only a sum of Rs.30,000/- was paid. He would further submit that in the written statement, defendant no.1 has stated as regards the payment of Rs.30,000/- by cheque and in the cross-examination it is deposed that a cheque of Rs.30,000/- was given, which according to the defendant was not encashed and in lieu thereof the plaintiff has paid a sum of Rs.30,000/-. He would further submit that in view of the evidence which had come out on record, it is necessary for the plaintiff to place on record the additional evidence to show the encashment of cheque. He draws support from the decision of this Court in ***Haji Munir Ahmed Mansoor v. State of Maharashtra [2008(3) ALL MR 62]***. In the said decision, this Court relies upon the judgment of the apex Court in ***Bachhaj Nahar v. Nilima Mandal [AIR 2009 SC 1103]*** which relies upon the constitution bench decision of the apex Court in ***Bhagwati Prasad v. Shri. Chandramaul [AIR 1966 SC 735]***, in which the apex Court has

reiterated the view taken that whenever the question about lack of pleading is raised, the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial.

4. Considered the submissions.

5. The application has been rejected on the ground that there are no pleadings as regards the payment of a sum of Rs.60,000/- and that the plaintiff had come with a case that only payment of Rs.30,000/- was made. However, the fact remains that in the cross-examination, it has been brought out that a sum of Rs.30,000/- has been paid by cheque, which according to the defendant's witness was not encashed and in lieu thereof, a sum of Rs.30,000/- was paid in cash. That being so, it cannot be said that the defendant was unaware of the case of plaintiff and that the issues which are involved in the trial. *Prima facie*, it appears that the application for production of additional document is in consonance with the pleadings in plaint.

6. Issue notice to the respondents, returnable on **7th August 2023**. In addition to the Court notice, petitioner to serve the respondents by private notice by all permissible modes of service and

file affidavit of service before the next date.

7. Till the next date, the suit is stayed.

[Sharmila U. Deshmukh, J.]