

(2017) 06 BOM CK 0135
In the Bombay High Court
Case No : 421 of 2017

Mr. Sabino Cotta

APPELLANT

Vs

M/S V. Naik and Associates, A Partnership Firm represented
by its Partner and Attorney, Shri Ramchandra alias Sanjeev
Vasudeo Naik

RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

[Bankers Books Evidence Act, 1891](#), [Section 6](#)
- Inspection of books by order of Court or Judge

Citation : (2017) 06 BOM CK 0135

Hon'ble Judges : C. V. Bhadang

Bench : SINGLE BENCH

Advocate : Clayton Fonseca, Sudin Usgaonkar, Tanvi Kamat Ghanekar

Judgement

1. Rule made returnable forthwith. The learned Counsel for the respondent, waives service. Heard finally by consent of parties.
2. The petitioner is the original plaintiff, while the respondent is the defendant before the Trial Court. The petitioner (who is admittedly a tenant of the respondent in respect of the suit flat, where the petitioner is running coaching classes in the name and style as "M/s Smart Tutorials"), claims that there is an oral agreement under which the respondent has agreed to sell the suit flat to him for a consideration of Rs.15 lakhs. It is also contended that the petitioner was paying Rs.60,000/- per month to the respondent.
3. The respondent filed an application (Exhibit-40) before the Trial Court for a direction to produce the statement of Account of the petitioner with Saraswat Co-operative Bank, Margao Branch (Account No. 1192) from June, 2003 to 31.03.2010. By the impugned order dated 07.03.2017, the learned Trial Court has allowed the application, which order is subject matter of challenge in this petition.

4. I have heard the learned Counsel for the petitioner and the learned Senior Counsel for the respondent and gone through the record.

5. It is submitted by the learned Counsel for the petitioner that the learned Trial Court could not have called for the entire statement of Account. Reliance is placed on Section 6 of the Bankers' Book Evidence Act, 1891, in order to submit that in appropriate case, the Court can order the Bank to prepare and produce certified copy/s of all such entries, relevant to the matters in issue, in such proceedings. It is submitted that in such circumstances, the Trial Court could have restricted, for calling the relevant entries.

6. It is submitted by the learned Senior Counsel for the respondent that the ground based on Section 6 of the Bankers' Book Evidence Act, was not raised before the Trial Court. In any event, the learned Senior Counsel does not dispute that the respondent only wants the relevant entries by which the license fee was paid by the petitioner by way of Bearer Cheques drawn on the Account of M/s Smart Tutorials.

7. Considering the circumstances and the submissions made, in my considered view, the impugned order can be modified, in order to direct the Bank to prepare and produce the certified copy/s of all such entries in respect of the payments made by the petitioner by Bearer Cheques in favour of the respondent. Ordered accordingly. The Bank shall prepare and furnish such statement within four weeks from the service of this order.

8. Rule is made absolute in the aforesaid terms with no order as to costs.