

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1199 OF 2014

1. Rushikesh S/o. Prakash Kharole,
Age - 26 years, Occu. Education.
2. Prakashchandra S/o. Dattatraya Kharole,
Age: 61 years, Occu. Business.

Both R/o. 17, Hareshwarnagar,
Ring Road, Jalgaon.

...PETITIONER.

VERSUS

1. Chandrashekhhar S/o.Subhash Kharole,
Age - 35, Occu. Business,
2. Subhash S/o. Dattatraya Kharole,
Age - 65 years, Occu. Business.

Both R/o. C/o.Vimal Jewellers,
Siddharatha Darshan, Kumthekar
Road, Infront of Sweet Home,
Near Kala Mandir, Pune -30

...RESPONDENTS

3. Rasiklal S/o.Bhogilal Shah,
Age: 85 years, Occu.Business,
R/o. House No.148, Balaji Peth,
Saraf Bazar, Jalgaon.
4. Vilas S/o.Babulal Shah,
Age : 65 years, Occu.Business,
R/o. 401, B, Shanti Apartment,
Shaktinagar Gate, Dahisar (East),
Mumbai - 400 068.
5. Deelip S/o.Babulal Shah,
Age: 65 years, Occu.Business,
R/o. C-001, Premnagar, 4,
S.V.P.Road, Boriwali (West)
Mumbai.

6. Asha W/o. Nalin Shah,
Age: 70 years, Occu.Household,
R/o. 204, Suls Apartment,
254, Ratilal Thakkar Marg,
Walkeshwar, Mumbai.
7. Sau.Kanta W/o. Mohanlal Varma,
Age: 50 years, Occu.Household,
R/o. 147, Saraf Bazar,
Balaji Peth, Jalgaon.

...Added Respondents.

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Mr. L.V.Sangit, Advocate h/f. Smt.Minakshi
L.Sangit, Advocate for Petitioner;
Mr.M.M.Bhokarikar, Advocate for Respondent Nos. 1
and 2.

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CORAM: P.R.BORA, J.

DATE : December 1st, 2015

PER COURT:

1. Heard.
2. Order dated 16.9.2013 passed by the 9th Joint Civil Judge, Junior Division, Jalgaon, below Exh.33 and Exh.35 in Regular Civil Suit No.122/2011 is questioned in the present petition. The petitioners and respondents in the present petition, hereinafter, are referred to with reference to their original status before the trial Court i.e. of plaintiffs and defendants.
3. Invoking the the provisions under Order 11, Rules 14 and 16 of the Code of Civil Procedure, the plaintiffs had filed

two separate applications, having similar contents, with the similar prayer that the defendants be directed to produce on record the stamp paper dated 4.7.2010. The learned trial Court, vide the impugned order, rejected both the applications for two reasons; the first that the plaintiffs have failed in bringing on record that the document, of which the production is sought, is relating to the subject matter of the suit, and that the fate of the said suit depends upon the said document, and the other that the plaintiffs did not file on record any evidence showing that the notice as contemplated under Order 11 Rule 15 was, in fact, issued to the defendants, and further that the said notice was duly received to the defendants.

4. Learned Counsel appearing for the petitioners / plaintiffs submitted that, in many words, the plaintiffs have averred in their petition as to relevance of the stamp paper dated 4.7.2010. The learned Counsel further submitted that even in the written statement filed by the defendants, they have referred to the said document, and have denied the allegations made by the plaintiffs in relation to the said document, to the effect that their signatures were obtained on the said stamp paper under coercion, and without giving knowledge to them about the contents of the said stamp paper. The learned Counsel further submitted that the plaintiffs in their applications at Exh. Nos. 33 and 35 have categorically stated that they have issued notice to the defendants for production of the said stamp paper by Registered Post Acknowledgment Due. The learned Counsel submitted that though the plaintiffs did not produce on record the office copy of the notice so issued by them to the defendants, and also did not place on record the postal slips, as well as the acknowledgment receipts, all these

documents have been placed on record by them in the present petition. In the circumstances, the learned Counsel for the petitioners prayed for allowing the writ petition by setting aside the impugned order dated 16.9.2013 and, consequently, to allow the applications submitted by them at Exh.33 and Exh.35 submitted by them before the trial Court.

5. The learned Counsel appearing for the respondents / defendants strongly opposed the submissions made on behalf of the petitioners / plaintiffs. The learned Counsel submitted that the trial Court has passed an elaborate well reasoned order, and no interference is required in the said order.

6. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. The petitioners / plaintiffs have placed on record the office copy of the notice dated 10.10.2011 sent by them to the defendants / respondents under Order 11 Rules 14 and 16 by Registered Post Acknowledgment Due. The petitioners / plaintiffs have also placed on record the postal slips, evidencing that the aforesaid notice was sent by them by Registered Post. The petitioners / plaintiffs have also placed on record the copy of the acknowledgment receipt showing that the aforesaid notice was duly received to defendant no.1 Chandrashekhar on 14.10.2012. Perusal of the application Exh.33 reveals that the plaintiffs have averred in the said notice that they have sent the notice to the defendants under Order 11 Rules 14 and 16 seeking production of the stamp paper in question by Registered Post Acknowledgment Due. It is not in dispute that the aforesaid documents, which have been now filed by the

petitioners in the present petition, were not filed before the trial Court. The impugned order shows that non filing of the aforesaid documents is one of the reasons that the trial Court refused to consider the request made in the said applications by the plaintiffs, seeking production of the stamp paper dated 4.7.2010 from the defendants. It is quite evident that, had the aforesaid documents been filed by the plaintiffs before the trial Court, possibly, the trial Court may have taken a different view.

7. In the above circumstances, without going into the merits of the issue raised by the petitioners in the present petition, I deem it appropriate to remit back the matter to the trial Court with a direction to allow the plaintiffs to submit on record the documents i.e. the office copy of the notice dated 10.10.2011, the postal slips as well as the acknowledgment receipt thereof, and to decide the applications at Exh.33 and Exh.35 afresh, and it is ordered accordingly. Needless to state that the trial Court shall give due opportunity to the parties to the suit to put forth their respective contentions.

The Writ Petition, thus, stands partly allowed.

(P . R . BORA)
JUDGE

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AGP/1199-14wp