

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4832/2014

Dipali Satish Pakhan

..Versus..

Pavan Prabhudas Fande and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 5.5.2015

1. Heard Shri Harshal Bobade, the learned advocate for the petitioner and Smt. S.W. Deshpande, the learned advocate for respondents 1 and 2.

The petitioner/plaintiff takes exception to the order passed by the trial Court rejecting the application (Exh. No.76) filed by the petitioner praying for permission to lead the secondary evidence.

2. The petitioner filed the application (Exh. No.76) seeking permission to lead secondary evidence in respect of documents as mentioned therein, on the ground that those documents have been lost. The learned trial Judge, after considering the pleadings of the

petitioner in the plaint and the affidavit filed in lieu of examination-in-chief, has found that the petitioner had earlier taken the stand that the original of the agreement of lease is with defendant no.2. The petitioner has not placed anything on record to show that the findings recorded by the learned trial Judge about the contradictory pleadings of the petitioner are not proper. I see no reason to interfere with the impugned order

3. The learned advocate for the petitioner has submitted that as the original agreement of lease has been lost and this has been stated on oath in the application (Exh. No.76), the learned trial Judge ought to have exercised the jurisdiction under Section 65(c) of the Evidence Act and should have granted permission to lead the secondary evidence. In support of this submission, the learned advocate for the petitioner has placed reliance on the judgment given in the case of *Marwari Kumhar and others V/s. Bhagwanpuri Guru Ganeshpuri and another* reported in **(2000) 6 SCC 735**. The proposition that the party can be permitted to lead the secondary evidence if it is proved that the original document has been lost, is well settled. However, in the present case, the trial Court, after considering the pleadings of the petitioner, has

found that the petitioner has taken contradictory stand. Hence, the above referred judgment does not support the petitioner.

The impugned order does not suffer from any patent illegality or irregularity, which necessitates the interference by this Court in the extraordinary writ jurisdiction.

4. In view of the above, the writ petition is dismissed with costs quantified at Rs.2,000/- (Rs. Two Thousand Only) to be paid by the petitioner to respondents 1 and 2 within two months. If the amount of costs is not paid within the stipulated time, the learned trial Judge shall pass appropriate orders considering it to be non-compliance of the order of this Court.

JUDGE

Tambaskar.