

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

Writ Petition No. 6022/2015

- 1] Smt. Sunanda Subhashrao Mule,
Aged about 51 years,
Occ. Household Work,
- 2] Ku. Joyti Subhashrao Mule,
Aged about 33 years,
- 3] Ku. Jyotsana Subhashrao Mule,
Aged about 30 years,
- 4] Ku. Priti Subhashrao Mule,
Aged about 29 years,
- 5] Ku. Swati Subhashrao Mule,
Aged about 26 years,
- 6] Sagar Subhashrao Mule,
Aged about 22 years,
- 7] Mayur Subhashrao Mule,
Aged about 20 years,

All R/o Devrankar Nagar, Amravati

..... **PETITIONERS**

...V E R S U S...

Rajesh Dulichand Bijore,
Aged about Major,
R/o Morbag, Back side of Old Cotton Market,
Amravati

..... **RESPONDENT**

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Shri A.De, Advocate for the Petitioners
Shri R.D. Bhuihar, Advocate for the Respondent

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CORAM:- Z.A. HAQ,J.

DATED :- 14th December, 2017

ORAL JUDGMENT :-

Heard.

Rule. Rule made returnable forthwith.

2] The respondent/plaintiff had filed the civil suit praying for decree for specific performance of contract. The petitioners/defendants opposed the claim of the plaintiff. The trial progressed and by the judgment dated 27/07/2007, the claim of the plaintiff is decreed. The defendants have filed appeal before the District Court which is pending. In this appeal, the defendants filed application (Exh. 43) under Rule 27 of Order 41 of the Code of Civil Procedure seeking permission to produce additional evidence. This application is rejected by the impugned order.

The additional evidence which the defendants seek to produce is the daily newspaper "Hindustan" dated 04/12/2002 in which a public notice was issued by the defendant no. 1 to the effect that the agreement of sale between the defendants and the plaintiff was cancelled. The other evidence which the defendants seek to produce is the affidavit sworn by the defendant no. 1 on 02/12/2002 to substantiate that she was present in the office of the Sub-Registrar on that date.

3] The learned District Judge has recorded that the newspaper is filed, however, it is not exhibited and the defendant has not deposed that on 02/12/2002, she was present in the office of the Sub-Registrar to execute the sale-deed. The facts show that the affidavit is exhibited as Exhibit-54. The learned advocate for the petitioners has pointed out from the written statement which was filed by the defendant nos. 1 to 3 before the trial Court, the pleadings referring about the publishing of notice in the newspaper dated 04/12/2002 and that the defendant was present in the office of the Sub-Registrar.

Considering the facts on record, I find that the learned District Judge has committed an error of jurisdiction by rejecting the application (Exh. 43) .

4] The learned advocate for the respondent/plaintiff has submitted that in view of the proposition laid down in the judgment given by the Hon'ble Supreme Court in the case of *Union of India vs Ibrahim Uddin and another* reported in (2012) 8 SCC at page 148, it would not be appropriate to grant the prayer of the

petitioners and allow the application (Exh. 43), and if at all it is to be considered, it should be at the stage of final hearing of the appeal. The submission made by the learned advocate for the respondent/plaintiff on this point requires consideration and as per the proposition laid down by the Hon'ble Supreme Court given in the case of *Ibrahim Uddin and another* (supra), the District Court is directed to consider the application (Exh. 43) at the stage of final hearing of the appeal.

Hence, the following order is passed:-

ORDER

- 1] The impugned order is set aside.
- 2] The application (Exh. 43) is restored.
- 3] The learned District Judge shall consider and decide the application (Exh. 43) at the time of final hearing of the appeal.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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