

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

WRIT PETITION NO. 5465 OF 2017

(Sau. Chanda Dhanraj Manwatkar...VS...Nandkishor Kawaduji Chandekar)

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

Court's or Judge's orders

Shri R. G. Kavimandan, Advocate for Petitioner.

CORAM : S.C.GUPTE, J.
DATED : 22nd AUGUST, 2017.

Heard learned counsel for the petitioner.

The subject matter of challenge in the present petition is an order passed by the Joint Civil Judge Junior Division, Hinganghat, District-Wardha in Regular Civil Suit No.25 of 2010. The application, on which the impugned order was passed, was for medical examination of the respondent herein (original defendant to the suit) to prove his impotency. Strangely this application was moved in the context of a defence raised by the respondent that the suit was bad for non-joinder of the widow and son of his predeceased brother, who were necessary parties to the suit. It is the case of the petitioner that both the respondent and his predeceased brother were impotent and this fact could be proved by subjecting the respondent to a medical test. This Court is at a loss to know how the alleged impotency of the deceased brother of the respondent may have anything to do with his having a wife. Even otherwise it is inconceivable that a medical test of the respondent would reveal the impotency of his deceased brother. Be that as it may, it is inconceivable that on an application such as this, the Court would order a medical test to find out whether the deceased was impotent.

The learned Judge correctly dismissed the application. There is no merit in the challenge to the impugned order. The Writ Petition is accordingly dismissed. It is, however, clarified that it will be open to the petitioner herein to contest the respondent's case that his deceased brother either had a wife or a son in any manner known to law.

JUDGE

PBP