

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

WRIT PETITION NO. 4300 OF 2017

- 1 Sopan Kashinath Taake,
Age : 77 years, Occupation : Agriculture,
R/o Khadka Shivar,
Taluka Newasa,
District Ahmednagar.
- 2 Kadubai Sopan Taake,
Age : 67 years, Occupation : Agriculture,
R/o Khadka Shivar,
Taluka Newasa,
District Ahmednagar.
- 3 Ramnath Sopan Taake,
Age : 46 years, Occupation : Agriculture,
R/o Khadka Shivar,
Taluka Newasa,
District Ahmednagar.

...PETITIONERS

-VERSUS-

- 1 Trimurti Pawan Pratisthan.
A registered educational Trust,
having its office at Trimurti Nagar,
Newasa Phata, Taluka Newasa,
District Ahmednagar.
Through its President :
Sau.Sumati Sahebrao Ghadge Patil,
Age : 60 years, Occupation : Agriculture
and Social Work,
R/o As above.
- 2 Shri Dadasaheb Haribhau Ghadge Patil,
Honorary Trustee of
Trimurti Pawan Pratisthan,
Age : 72 years, Occupation : Agriculture,
R/o Newasa Phata, Taluka Newasa,

District Ahmednagar.

- 3 Chief Executive Officer,
Trimurti Pawan Pratisthan,
Sahebrao s/o Haribhau Ghadge Patil,
Age : 63 years, Occupation : Agriculture
and Social Work,
R/o As above.
- 4 Shivaji s/o Kachru Pandure,
Age : 67 years, Occupation : Agriculture,
R/o Newasa Phata,
Ahmednagar Aurangabad Road,
Taluka Newasa,
District Ahmednagar.

...RESPONDENTS

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Advocate for the Petitioners : Shri Bhandari Anand P.

Advocate for Respondents 1 to 3 : Shri A.S.Gandhi.

Advocate for Respondent 4 : Shri S.D.Kotkar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th June, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioners, who are the original Defendant Nos.2 to 4 in RCS No.87/2010, are aggrieved by the impugned order dated 01.02.2017 by which, the Trial Court has rejected the application Exhibit-109 filed by these Petitioners seeking transposition as co-plaintiffs under Order 1 Rule 10 of the Code of Civil Procedure.

3 I have heard the submissions of the learned Advocates for the respective sides at length. With their assistance, I have gone through the petition paper book.

4 It is pointed out that though the Trial Court has used the word "transport" or "transportation" in the impugned order, the Trial Court probably desires to mention "transpose" or "transposition" in the impugned order.

5 The issue that is seriously canvassed by Respondent No.4/ original Defendant No.1 is as to whether, the co-defendant could be transposed as co-plaintiff under Order 1 Rule 10 and that too with regard to the agreement dating back to 1998. It is further canvassed that if the Plaintiffs desire specific performance of the agreement of 1998 in the suit filed in 2010 as against all the Defendants, can the co-defendants be permitted to seek transposition as co-plaintiffs in such peculiar facts emerging from the plaint.

6 Though the above issue raised by Defendant No.1 is arguable and needs consideration, I find that the Trial Court has not even touched the said issue, much less, dealt with it. The Trial Court has merely reproduced the contentions of the parties and list of citations in the impugned order. In paragraph 6, the Trial Court has noted that *"If Defendant No.2 to 4 made the compromise and agreed to perform their part, in such circumstances, the enforcement of the contract remains only to the*

extent of Defendant No.1. There is no need to transport them at a belated stage. Defendants No.2 to 4 cannot setup case of specific performance of contract against Defendant No.1. Therefore, there is no need to transport them as Plaintiffs." (reproduced verbatim).

7 It is settled law that all issues raised by the litigating sides, which are germane to the cause of action, have to be dealt with when the Court passes a judicial order. Reasons are the heart and soul of any order as they indicate the application of mind and conclusions drawn by the Court based on the contentions raised before it. In the impugned order, I do not find that the Trial Court has dealt with the contentions of the parties while passing the said order.

8 In view of the above, this Writ Petition is partly allowed. The impugned order dated 01.02.2017 is quashed and set aside and the application Exhibit-109 is restored in RCS No.87/2010. The litigating sides agree to canvass their oral submissions and also tender the written notes of arguments, if so advised, on or before 30.06.2018. As such, the Trial Court would decide the application Exhibit-109 afresh on or before 31.07.2018.

9 Rule is made partly absolute in the above terms.