

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

CRIMINAL APPLICATION (APL) NO.25 OF 2018.

Sau.Kiran w/o Girish Agrawal

..vs..

M/s Shraddha Developers and Builders c/o Hotel Classic and ors.

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

Court's or Judge's orders

Mr.S.A.Mohta, Adv. for the applicant.
Mr.R.N.Ghuge, Adv. for non-applicant no.1 and 2.
Mr.J.Y.Ghurde, APP for non-applicant no.3.

CORAM : P.N.DESHMUKH, J.

DATE : JULY 2, 2018.

1. Heard learned counsel for applicant, learned counsel for non-applicant nos.1 and 2 and learned Additional Public Prosecutor for non-applicant no.3.

2. Challenge in this application is to impugned order dated 7th December, 2017 passed by learned Additional Sessions Judge – 2, Akola in Criminal Revision No.128 of 2017 filed by applicant rejecting the same being not tenable as is filed against the interlocutory order.

3. Learned counsel of both the sides without going into the merits of the application has conceded to appear before the trial Court and shall adopt recourse as has been contemplated by Coordinate Bench of this Court for leading secondary evidence and laid down in the case of *Karthik Gangadhar Bhat ..vs.. Nirmala*

Namdeo Wagh and anr. in Writ Petition No.11151 of 2017. Relevant paragraphs in the said judgment are reproduced as under :-

“9. The result of such applications, which as I have noted are misconceived and not maintainable, is that exceedingly peculiar orders are passed either allowing or disallowing the leave sought. When leave is granted, apparently secondary evidence is then led but that leave is, as we have seen, completely unnecessary and a party may always place before the Trial Court secondary evidence as contemplated by the Evidence Act without such leave. The result of *disallowing* the application is even more serious because the evidence in question is wholly excluded from consideration without the slightest examination of the proposed secondary evidence. There is no question of examining the secondary evidence first at the stage of considering the application for leave. If the secondary evidence is sufficient to prove the document, then the document must be admitted into evidence. One of two things happen on any such application: either the secondary evidence is not considered, and the document is shut out, which is wrong, or the evidence is considered twice over, once for the so-called ‘leave’ and then again at the time of admitting the document”.

10. This is no way to conduct the trial. Conceivably, it might result in a document that might otherwise be admissible and proved by secondary evidence being wholly left out only because of an order of this kind on an application that in itself is misconceived and not contemplated in law. This procedure wastes scarce judicial time and achieves nothing. When a party goes to trial, he may have direct or primary evidence of some documents, and secondary evidence of orders. It is for him to decide which of these he can best prove by what evidence.”

4. In view of above pronouncement and as both the parties to the application agree to adopt recourse available under law, they are directed to appear before the learned Judicial Magistrate, Court No.5, Akola on 9th July, 2018 in S.C.C.No.3364 of 2008 which proceedings shall accordingly proceed further.

Application is disposed of in the above terms.

JUDGE

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