

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

WRIT PETITION NO.2634 OF 2016

Bala s/o Mahadeo Gedam
Vs.
Sampat Vishwanath Meshram & two others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri V.A.Dhabe, Advocate for petitioner.
Smt. V.P.Thakre, Advocate for LR's of respondent
no.1.(i.e. 1 to 6)

CORAM : A.S.CHANDURKAR, J.

DATED : June 04, 2019

CIVIL APPLICATION (W) No.370/2019

Perused the contents of the application. The legal heirs of the respondent no.1 are permitted to be brought on record. Amendment be carried out within one week from today.

Civil Application is disposed of.

WRIT PETITION NO. 2634/2016

In this writ petition, the petitioner who is defendant, has challenged the order dated 06.01.2016 passed by the trial Court below Exhibit 49 issuing notice to the party named in the said application in which it was prayed that action be taken against said party. In the suit filed by the respondents for specific performance of the agreement dated 09.08.2005, the plaintiffs had examined one Ashok Gawali as their third witness. Subsequently the

plaintiffs filed application below Exhibit 49 praying that action be taken against the said witness on the ground that he had deposed falsely. In that application, the trial Court issued notice to the said witness. That order is under challenge in the present writ petition at the instance of the original defendant.

Shri V.A.Dhabe, learned counsel for the petitioner submits that the trial Court was not justified in issuing any notice to the concerned witness especially when the requirement of Section 340 of the Code of Criminal Procedure, 1973, had not been satisfied. Pursuant to that notice the said witness had filed an affidavit dated 09.02.2016 stating therein that he had deposed under pressure exerted by the defendant. It is submitted that the aforesaid application was filed with a view to pressurise said witness so that various admissions made by the said witness in his cross-examination would be taken away.

Smt.V.P.Thakre, learned counsel for legal heirs of respondent no.1 supported the impugned order. She submitted that since action was proposed to be taken against the witness, the trial Court was justified in issuing the notice to that party.

On hearing learned counsel for the parties, it is seen that the application below Exhibit 49 is required to be considered by the trial Court when the suit is heard finally. The trial Court would be required to consider the entire evidence placed on record and then determine whether any action deserves to be taken against the said witness.

Mere fact that a notice has been issued to the said witness and further fact that the said witness has filed affidavit at Exhibit 51 shall not prejudice the trial Court when the application below Exhibit 49 is finally decided.

Keeping the respective contentions of the parties open, the writ petition is disposed of by observing that the trial Court shall decide the application below Exhibit 49 along with the suit on its own merits in accordance with law. No costs.

JUDGE

Andurkar.