

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

WRIT PETITION NO. 2461 OF 2017

- 1] M/s Navnirman Developers,
Through its Partner Mr. Sudhansu S/o
Manoranjana Biswas, aged about 65 years,
Occ. - Business and Agriculturist,
R/o Bungalow No. 3/1, Akar Builders,
Byramji Town, Chhindwara Road, Nagpur.

.... **PETITIONER**

// VERSUS //

- 1] Mr.Gopal S/o Laxmanrao Kondawar
aged about 57 years, Occ. - Business,
R/o 51, Harekrishna Enclave,
Ramdaspath, Nagpur.
- 2] M/s Kamal Kumar Shivkishan Agrawal (HUF),
Acting through its Karta Mr. Kamal Kumar
S/o Shivkishan Agrawal, aged about 43 years,
R/o "Shiv Villa", 918-99, Deshpande Layout,
Wardhaman Nagar, Nagpur.

.... **RESPONDENTS**

Shri A.C. Khare Adv. for the petitioner.
Shri P.S Sahare, Adv. for the respondent No. 1.
Shri H.D. Dangre, Adv. for the respondent No. 2

CORAM : Z.A.HAQ, J.

DATED : 1st August, 2019

ORAL JUDGMENT :

Heard.

2] **RULE.** Rule made returnable forthwith.

3] In the civil suit filed by the petitioner, the parties i.e. petitioner/plaintiff and respondents/defendants executed the memorandum of understanding dated 11.04.2013. According to the petitioner/plaintiff, the parties acted as per the memorandum of understanding and some criminal proceedings registered against the defendants as well as against the plaintiff were got quashed by approaching this Court under Section 482 of the Code of Criminal Procedure. The plaintiff had filed an application (Exhibit 26) before the trial Court praying that the memorandum of understanding be taken on record and decree be passed as per the terms of the memorandum of understanding dated 11.04.2013. This application (Exhibit 26) is dismissed by the trial Court by the impugned order.

4] At the time of hearing, the learned Advocates for the respondents/defendants submitted that they have no objection, if the memorandum of understanding dated 11.04.2013 is taken on record by the Civil Court. In view of the submission made on behalf of the defendants, trial Court is directed to take the memorandum of understanding dated 11.04.2013 on record of the civil suit.

5] As far as the prayer clause (iii) of the application (Exhibit 26) is concerned, I find that there is dispute between the parties about the terms of the agreement of memorandum of understanding dated 11.04.2013 and therefore decree, in-exercise of jurisdiction under Order XII Rule 6 of the Code of Civil Procedure on the basis of the memorandum of understanding cannot be passed. The trial Court will have to examine the rival contentions and the petitioner/plaintiff will be at liberty to adduce the evidence. Hence, the prayer clause (iii) of the application (Exhibit 26) cannot be granted at this stage.

6] Hence, the following order :

- (i) The impugned order is modified in the above terms accordingly.
- (ii) As the civil suit is of 2011, the learned trial Judge is directed to decide the civil suit till 30.11.2019.

Rule is made absolute accordingly. In the circumstances, the parties to bear their own costs.

JUDGE

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