

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

WRIT PETITION NO.4378/2017

Nutan Shrikrushna Khandelwal and another

..Vs..

Nandlal Ramchandra Wadhwani and another

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

Court's or Judge's orders

Shri V.S. Mishra, Advocate for the petitioners.
Shri Kunal Nalamwar, Advocate for respondent Nos.1 and 2.

CORAM : Z.A. HAQ, J.

DATED : 21.8.2019.

Order passed by the trial Court rejecting the application (Exh. No.52) filed by the petitioners under Section 195 read with Section 340 of the Criminal Procedure Code, 1973 is challenged. Against this order, revision under Section 397 of the Code of Criminal Procedure would lie. In view of this, learned Advocate for the petitioners seeks permission to withdraw the challenge to the order passed on application (Exh. No.52) with liberty to file criminal revision application. Challenge to the order passed on application (Exh. No.52) is permitted to be withdrawn with liberty to the petitioners as prayed for.

2] The other order which is challenged in this petition is one passed on application (Exh. No.53). By this application, the petitioners / defendants prayed that

the affidavit of plaintiffs' witness No.2 filed in lieu of examination-in-chief be discarded, as the affidavit contains many averments which have no foundation in the pleadings. Learned Advocate for the respondents / plaintiffs submitted that the trial of suit has progressed further and in any case, the affidavit filed by the plaintiffs' witness No.2 in lieu of examination-in-chief cannot be discarded as the defendants have admitted the execution of agreement of sale dated 15th May, 2013 on which the plaintiffs' witness No.2 is an attesting witness.

3] On going through the impugned order, I find that the learned trial Judge has not decided any issue which may affect any of the parties at the time of adjudication of the matter finally. It goes without saying that the averments made in affidavit filed in lieu of examination-in-chief which have no foundation in the pleadings can be always overlooked by the trial Court, if pointed out at the time of arguments also.

4] In view of the above, challenge to the order passed on the application (Exh. No.53) does not require any consideration.

5] Hence, the writ petition is **disposed**. In the circumstances, the parties to bear their own costs.

JUDGE