

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

**Writ Petition No. 5139 of 2018**

**Smt. Shailaja W/o Anil Mahajan and others**

**Vs.**

**Sheela Manohar Karekar and others**

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

Mr. D.V. Chawhan, Advocate for petitioners.  
Mr. P.N. Kothari, Advocate for respondents.

**CORAM : MANISH PITALE, J.**

**DATED : APRIL 24, 2019**

By this writ petition, petitioners (original plaintiffs) have challenged order dated 11/07/2018 passed by the Court of Civil Judge (Sr. Dn.), Nagpur (Trial Court), whereby an application for grant of permission for calling witnesses (Exh.111) has been rejected.

2. While issuing notice on 14/08/2018, this Court granted interim relief, while observing as follows.

"Heard.

Issue notice for final disposal at the admission stage to the respondents, returnable in four weeks.

Meanwhile, having considered the submission that a public document is required to be proved like any other document unless it is a document covered by Section 78 of the

Indian Evidence Act, 1872 and the reliance placed upon the case of Om Prakash Berlia & another Vs. Unit Trust of India & others - 1983 Mah. L.J. 339, there shall be interim stay in terms of prayer clause (3), until further orders."

3. The learned counsel for the petitioners did make submissions in furtherance of the aforesaid contention. But, in view of the contentions raised on behalf of the respondents (original defendants) in the context of Order XVI Rules 1 to 3 of the Civil Procedure Code, this Court has considered the present writ petition only on the said contentions raised by the respondents. It is found that the contention raised on behalf of the petitioners, on the basis of which notice was issued, is not required to be considered, particularly in view of the reasons given by the Trial Court while passing the impugned order.

4.. The impugned order was passed by the Trial Court on the aforesaid application at Exh.111. The said application was cryptic in nature and perusal of the same shows that it was bereft of details pertaining to the witnesses sought to be examined by the petitioner, as also the reasons why the said witnesses were now sought to be examined although they were not shown as witnesses in the list of witnesses submitted on behalf of the petitioners. It was

stated in the said application that certain documents filed by the petitioners and correctness of such documents needed to be proved and that the petitioners desired to call the witnesses so that the matter could be adjudicated properly. The Trial Court in the impugned order observed that the suit was pertaining to the year 2011 and that the petitioners had already examined four witnesses in the suit and that the list of witnesses at Exh.46 did not mention the names of the witnesses sought to be examined by the petitioners. It was also observed that the application at Exh.111 filed on behalf of the petitioners did not state the purpose for examination of such witnesses. On this basis and certain other observations, the Trial Court rejected the application filed on behalf of the petitioners.

5. The learned counsel for the respondents emphasized on the requirements of Order XVI of the Civil Procedure Code in the context of the Judgments rendered by this Court. Reliance was placed on the Judgment of this Court in case of **Anil Ramesh Bhusari Vs. Bhaskar Ramesh Bhusari and others 2014(5) Mh.L.J. 792** and the Judgment of this Court in the case of **Sanjay Sham Bagade and another**

**Vs. Ramesh Hari Madan and others 2014(5)**

**Mh.L.J. 321.** Perusal of said Judgments shows that it has been observed by this Court in the case of Anil Bhusari Vs. Bhaskar Bhusari (supra), after quoting the Order XVI Rules 1 to 4 C.P.C., as follows -

"5. Considering the procedure laid down in Order XVI, Rule 1(1) (2) and (3) of Code of Civil Procedure, it is clear that the party desirous of examining any witness has to be obtain summons for his attendance in the Court and this exercise has to be done in respect of the witnesses whose names are included in the list submitted by the party. As per Order XVI, Rule 1(3) of the Code of Civil Procedure, the Court may permit the party to call any other witness, provided the party who desires to examine any such witness whose name is not included in the list of witnesses, show sufficient cause for the omission to mention the name of such witness in the said list and the Court has to record reasons for permitting the party to examine the witness whose name is not included in the list submitted as per sub-rule (1) of Rule 1."

5. In the case of Sanjay Bagade Vs. Ramesh Madan (supra), again in the context of Order XVI of C.P.C., it has been observed that in absence of plaintiffs showing sufficient cause and the application being bereft of any reason, the plaintiff could not be allowed to examine witness under Order XVI of C.P.C. It was further observed that it was only after the plaintiff

satisfied the Court about showing sufficient cause for examining such witnesses that the application of such nature could be granted.

6. Applying the said position of law in the context of Order XVI Rules 1 to 4 of C.P.C. it becomes clear that the application in the present case filed on behalf of the petitioners was not only cryptic but it did not elaborate on the reasons for examining the proposed witnesses and, therefore, there was violation of the requirements of Order XVI Rules 1 to 4 of C.P.C.

7. In this backdrop, it cannot be said that the Trial Court has committed any error in rejecting the application. The reasoning adopted by the Trial Court does show that the position of law enunciated in the above quoted Judgment of this Court in the context of Order XVI Rules 1 to 4 C.P.C. was followed and that, therefore, it cannot be said that any error was committed by the Trial Court while passing the impugned order.

8. Accordingly, writ petition is found to be without any merits and it is dismissed.

9. However, it is made clear that the

observations made by the Trial Court in the impugned order regarding absence of necessity to prove the documents shall not come in the way of petitioners in moving such application as they may be advised to move before the Trial Court.

JUDGE

*MP Deshpande*