

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

WRIT PETITION NO.7420 OF 2017

Arun s/o Bhaiyyaji Nimbalkar,
aged about 45 years, Occ. Contractor
r/o Plot No.24 Postal Audit Colony,
Ranapratapnagar Nagpur 440022 ... Petitioner

-vs-

The Corporation of the City of Nagpur
Mahanagar Palika Marg, Civil Lines,
Nagpur.
And Ors. ... Respondents.

Shri V. S. Bapat, Advocate for petitioner.
Shri A. M. Quazi, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : September 25, 2019

P.C.

Rule. Heard finally with consent of counsel for the parties.

The petitioner is the original plaintiff who is aggrieved by the order passed by the trial Court below Exhibit-23 rejecting the application that was filed under provisions of Order XI Rule 12 of the Code of Civil Procedure, 1908 seeking discovery of documents mentioned in the accompanied list. It is submitted on behalf of the petitioner that in the said application it was prayed that the Work Order as well as the measurement book which was referred to in paragraph 5 of the plaint were in possession of the defendants and hence they be directed to make discovery on oath with regard to those documents. The application was opposed by the defendants. The trial

Court observed that the original Work Order was with the successful bidder and not the defendants. On that count the application was rejected.

2. After hearing the learned counsel for the parties it is seen that in the application at Exhibit-23 discovery of documents in relation to the Work Order and measurement book had been sought. There is no adjudication of the prayer in respect of discovery of the measurement book which is claimed to be in possession of the defendant. As a result, the said application has not been considered in the proper prospective. It is therefore found that application at Exhibit-23 requires reconsideration.

3. Accordingly the order dated 04/02/2017 passed below Exhibit-23 is set aside. The trial Court shall reconsider that application on its own merits and in accordance with law. Consequently the order passed below Exhibit-30 would not operate. All points are kept open.

The Writ Petition is allowed in aforesaid terms with no order as to costs.

JUDGE