

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

WRIT PETITION NO.1654 OF 2019

Sunil Prabhakar Rao Papinwar, Pusa, Dist. Yeotmal

-vs-

Dr Shrikant Prabhakar Rao Papinwar, Mahesh Nagar, Aurangabad

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

Court's or Judge's Orders.

Shri B. N. Mohta, Advocate for petitioner.
Shri N. S. Deshpande, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : October 04, 2019

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

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit-46 rejecting an application that was moved by the defendant praying that the pen drive placed on record by the defendant be viewed in presence of the parties. The trial Court rejected that application on the ground that the provisions of Section 65(b) of the Indian Evidence Act, 1872 (for short, the said Act) had not been complied.

2. Heard Shri B. N. Mohta, learned counsel for the petitioner and Shri N. S. Deshpande, learned counsel for the respondent. According to the learned counsel for the petitioner when the

application at Exhibit-5 for grant of temporary injunction was under consideration there was no question of seeking compliance with the provisions of Section 65(b) of the said Act. The basis on which the impugned order has been passed is contrary to the decision of this Court in *Sanjay s/o Shrikishnaji Somani and anr. vs. Vishnupant s/o Shankarrao Shahane 2007(6) Mh.L.J. 550*. The order is therefore liable to be set aside.

3. On the other hand Shri N. S. Deshpande, learned counsel for the respondent submits that the adjudication of the application for temporary injunction moved by the respondent is being delayed on one count or the other. Moreover, the trial Court was justified in rejecting the said application as it did not comply with the legal requirements. Hence no interference was called for.

4. It is seen that the application for temporary injunction is being considered by the trial Court. It is at that stage that the application at Exhibit-46 was moved by the defendant. In view of the decision in *Sanjay S. Somani and anr.* (supra) at the interlocutory stage it was not necessary to go into the evidentiary value of the said pen drive. That stage is yet to come. Even otherwise it is submitted by the learned counsel for the petitioner

that now the certificate under Section 65(b) of the said Act has been obtained by the petitioner. Be that as it may, the following order would serve the ends of justice :

(i) The order passed passed below Exhibit-46 on 29/09/2018 is set aside.

(ii) The trial Court shall consider the application at Exhibit-46 afresh in the light of the decision in *Sanjay S. Somani and anr.* (supra). Thereafter the trial Court shall decide the application below Exhibit-5 expeditiously on its own merits. All points on merits are kept open.

Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE