

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

WRIT PETITION NO. 226 OF 2018

Shri Nandlal Ruchandmal Pahlajani (Deceased)
Sau. Sulakshani Nandlal Pahlajani and another
...Versus...
Shri Puranlal Rewachand Hablani

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

Court's or Judge's orders

Shri A.M. Sudame, Counsel for petitioners

CORAM : AVINASH G. GHAROTE, J.
DATE : 28/02/2020

1. By an order dated 15/01/2018, notice was issued to the respondent. The farad-sheet dated 12/02/2018, shows that the respondent sole was served, however, from 12/02/2018 till today, none has appeared for the respondent. Today also, when the matter is called, none appears for the respondent.

2. Heard Mr. Sudame, learned Counsel for petitioner. A suit is filed by the plaintiff/respondent, for specific performance and declaration that a gift-deed dated 15/06/2011 was illegal and not binding on him. The plaintiff after examining witnesses closed his side. The defendant No.3 thereafter, examined himself and one more witness

Mr. Mahesh Nandwani, as D.W.2, who was the attesting witness to the gift-deed dated 15/06/2011. DW.2 was cross-examined on 30/01/2017 itself.

3. On 10/07/2017, an application came to be filed by the plaintiff, for issuance of witness summons to call for records and to lead evidence, to the Branch Manager, Indian Bank, Amravati, to produce account payee cheque No.138386 and the extract of account of Shri Nandlal Pahalajani as well as of the defendant No.2. The said application was based upon an allegation, that the D.W.2, had accepted money to depose in favour of the defendants.

4. The defendants by the reply dated 01/08/2017, opposed the application, as filed by the plaintiff. It was further stated, that the provisions of Order 18, Rule 17-A of Civil Procedure Code were already deleted w.e.f 01/07/2002, and as such the power to do so was not available with the Court.

5. The learned Trial Court by the impugned order dated 21/11/2017, has allowed the application, and granted permission to the plaintiff to lead his evidence.

6. Mr. Sudame, learned Counsel for petitioners, submits, that the application as filed by the plaintiff at Exh.161, was not maintainable in law. He submits, that consequent to the deletion of Order 18, Rule 17-A of Code of Civil Procedure, the Court was not empowered to entertain and decide the application as filed by the plaintiff. Inviting

my attention to the cross-examination of the D.W.2 as placed on record, he points out that all the suggestions to the witness as put by the learned Counsel for the plaintiff, were denied. He, therefore, submits, that merely on the basis of denial of a suggestion as put in cross-examination that Rs.5,00,000/- were transferred by Nandlal, defendant No.1, or a cheque was given to him by Sohan Pahalajani, the course as permitted to be adopted by the learned Trial Court was impermissible.

7. With the assistance of learned Counsel for the petitioners, I have perused the record. The evidence of D.W.2, as placed on record, merely indicates, that certain suggestions were put to the witness by the counsel for the plaintiff, including the one as indicated above, which was denied by the witness.

8. That being the position, there was no reason or cause, for the learned Trial Court to pass an order, which would revert the clock back by permitting the plaintiff to summon documents or examine witnesses. A perusal of the plaint as placed on record, does not indicate that any case was pleaded by the plaintiff, that the D.W.2, had signed the gift-deed as a witness, on account of any inducement. That being the case, merely for denial of a suggestion by a witness in the cross-examination, the course as adopted by the learned Trial Court, as reflected by the impugned order, is clearly impermissible in law. The impugned order therefore,

lacks legality and cannot be sustained. The same is therefore, set aside and the application filed by the plaintiff at Exh.161, is rejected.

The writ petition is allowed and disposed of accordingly. In the circumstances, there shall be no order as to costs.

JUDGE

J.Pethe