

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

Writ Petition No. 6552 of 2019

Vishwanath Takalkhede & Anr. Vs. Suresh Dhoble & Others

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

Court's or Judge's orders

Mr. S.N. Bhattad, Advocate for the petitioners
Mr. S.P. Bhandarkar, Advocate for the respondents No.1 to 6.

CORAM : MANISH PITALE, J.

DATED : MARCH 04, 2020

By this writ petition, the petitioners (original defendants) have challenged orders passed below Exhs.120 and 126. By the application at Exh.120, the respondents (original plaintiffs) sought permission to place on record certain documents attached with the list and by application at Exh.126, the respondents sought permission to adduce additional evidence in the matter.

2. The petitioners objected to the prayers made in the application, particularly the prayers made in application at Exh.126 on the ground that since the cross – examination of the witness on behalf of the original plaintiffs i.e. plaintiff No.6 was still underway, at this stage, such an application for permission to adduce additional evidence on behalf of respondents (plaintiffs) could not have been entertained.

3. A perusal of the impugned order passed below Exh.126 shows that the Court below had proceeded on the basis that cross – examination of the witness of the plaintiff was completed on 16/07/2019. This is specifically disputed by the petitioners before this Court and copies of the proceedings were brought to the notice of this Court to show that on 16/07/2019, the cross – examination of the witness for plaintiffs was being undertaken on behalf of the respondents (original defendants) and that further cross – examination was deferred. On this basis, it was submitted that the factual premise on which the impugned order was passed below Exh.126, was erroneous and that, therefore, said order deserves to be set aside. It is submitted that such an application could not be entertained by the Court below during the course of cross – examination of the aforesaid witness of the plaintiffs and that it was clearly in violation of the order of recording of evidence, as specified in Section 138 of the Evidence Act, 1872.

4. The learned counsel appearing for the respondents (plaintiffs) on verification of record of the Court below conceded to the fact that on 16/07/2019, the cross – examination of the witness for the plaintiffs was deferred and consequently, the observation made in the impugned order passed below Exh.126 was erroneous.

5. Once it is established that the cross - examination of the witness for the plaintiffs was still underway and it was yet to be completed, considering the relevant provisions of the Evidence Act, particularly Section 138 thereof, it becomes clear that application in the nature of one filed at Exh.126 could not have been entertained by the Court below at the stage when the cross-examination of the witness for plaintiffs was yet to be completed. Therefore, on this short ground, the impugned order passed below Exh.126 deserves to be set aside.

6. In view of above, the impugned order below Exh.126 deserves to be set aside. The learned counsel appearing for the petitioners, on instructions, submits that challenge raised in the present writ petition to order passed below Exh.120 is not pressed.

7. In view of above, the writ petition is partly allowed. The impugned order dated 29/08/2019, passed by the Court below on application at Exh.126 is quashed and set aside. It is made clear that the respondents (plaintiffs) would be at liberty to move an appropriate application at the stage of re-examination if so advised, which shall be decided by the Court below in accordance with law.

8. The writ petition is disposed of.

JUDGE

MP Deshpande