

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

WRIT PETITION NO. 7998 OF 2019

Ravindrakumar s/o Shikharchand Jain (Choudhary)

vs.

Vimalkumar s/o Hazarilal Jain (Deodia)

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

Court's or Judge's orders

Smt.Surabhi Godbole h/f. Shri. M. B. Naidu, counsel for petitioner.
Shri. R. M. Sharma, counsel for respondent.

CORAM : MANISH PITALE J.

DATED : 12/02/2020

By this writ petition, the petitioner (original defendant) has challenged order dated 15/10/2019 passed by the Court of Small Causes, Nagpur, whereby an application Exh.51 was rejected, the said application was filed by the petitioner for discarding evidence on affidavit filed by the respondent (original plaintiff).

2. The respondent filed a suit for recovery of arrears of rent and for recovery of possession of the suit property against the petitioner herein. An affidavit in evidence was filed on behalf of the respondent in the said proceeding. It is undisputed that during the pendency of the suit, the plaint as well as the written statement were amended by the parties. It is at this stage that the respondent filed a fresh examination-in-chief along with pursis marked as Exh.34. The fresh

examination in chief of the respondent was marked as Exh.35. The said document was permitted to be placed on record in place of the earlier affidavit in evidence. According to the respondent, the fresh affidavit in examination in chief of the respondent was necessitated due to the amendments carried out in the pleadings of the parties.

3. According to the petitioner, the Court below could not have permitted the respondent to place on record document at Exh.35 by allowing the earlier such document to be withdrawn. On this basis, it was claimed in the application at Exh.51 that the document at Exh.35 deserved to be discarded.

4. By the impugned order, the said application was rejected. The Court below found that in the documents now on record, there was nothing contrary to what had been stated in the earlier such document and that there appeared to be elaboration of statements incorporated by way of amendment of the pleadings.

5. The learned counsel appearing for the petitioner submits that there was no power in the Court below to have taken recourse to such a procedure. It was submitted that while the earlier examination in chief of the respondent was only upto paragraph 31, what was now added were paragraphs 31 to 43, wherein reference was made to documents apart from the specific document i.e. a sale deed referred to by incorporation of

paragraph 19A in the plaint by way of amendment.

6. It was submitted that the Court below failed to appreciate this aspect of the matter while passing the impugned order.

7. On the other hand the learned counsel appearing for the respondent submitted that no prejudice was caused to the petitioner in the first place and secondly, a perusal of paragraphs 31 to 43 of the document at Exh.35 now on record before the Court below would show that reference has been made to documents that are already on record before the Court below.

8. Heard learned counsel for the rival parties and perused the material on record. It is undisputed that the cross-examination of the respondent (original plaintiff) is yet to take place in the proceedings before the Court below. Comparative analysis of the examination in chief of the respondent now on record as permitted by the Court below would show that paragraph 31 has been replaced and paragraph 32 to 43 have been added as compared to the earlier documents on record. A perusal of the said paragraphs would show that reference is made to document already placed on record on behalf of the respondent. No new document is sought to be introduced in the said paragraph before the Court below. It is evident that the said contents have been added in terms of the amended pleadings and the

relevant documents already on record. This aspect has been observed by the Court below, while passing the impugned order.

9. The learned counsel appearing for the petitioner was unable to demonstrate as to whether any new material was sought to be introduced on behalf of the respondent in the aforesaid paragraphs of the documents at Exh.35. The petitioner is also unable to demonstrate any prejudice caused to him by the said document at Exh.35 being taken on record. The petitioner is also enable to demonstrate that either the respondent has sought to withdraw any statement made earlier before the Court below or to introduce a stand contrary to what is already on record on the basis of pleadings.

10. Therefore, it cannot be said that the impugned order passed by the Court below suffers from any error. Accordingly, it is found that the writ petition is without any merit and it is dismissed.

11. The Court below is directed to dispose of the suit as expeditiously as possible and in any case within a period of **10 months** from today.

JUDGE