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

Writ Petition No. 2089 of 2021

Rai Udhyog Ltd. Vs. Little Wonders Academy Pvt. Ltd.

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

Mr. A.A. Naik, Advocate for the petitioner
Mr. C.S. Dharmadhikari, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JUNE 21, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Writ Petition, the petitioner (original defendant) has challenged an order dated 28/04/2021, passed by the Court of Jt. Civil Judge (Senior Division), Amravati, whereby an application filed on behalf of respondent (original plaintiff) under Order 38 Rule 5 of the Code of Civil Procedure for attachment before judgment has been allowed.

3. It is submitted at the outset by the learned counsel appearing for the petitioner that a bare perusal of the impugned order would show that the said order has been passed without issuing notice to the petitioner and by merely recording the contentions raised on behalf of the respondent and by perusing the

documents relied upon by the respondent before the Court below. In fact, clause 3 of the impugned order shows that the Court below has issued notice to the petitioner after passing the order and then recorded that the notice was being issued to the respondent as to why the order already passed should not be continued, till the decision of the suit.

4. The learned counsel for the respondent does not dispute the fact that the impugned order was passed without first issuing notice to the petitioner before this Court.

5. In view of the above, this Court is convinced that the impugned order is unsustainable only on the short ground that notice was not issued to the petitioner before passing the order for attachment of certain properties by exercising power under order 38 Rule 5 of the Code of Civil Procedure. The Court below ought to have first issued notice and after hearing the petitioner, appropriate order could have been passed in the facts and circumstances of the case.

6. In view of the above, the Writ Petition is allowed. The impugned order is quashed and set aside.

7. The Court below is directed to consider the application filed by the respondent (Exh.5) after giving opportunity of hearing to the petitioner.

8. The Court below shall decide the said application as expeditiously as possible.

JUDGE

MP Deshpande