

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

WRIT PETITION NO. 709 OF 2019

Smt. Sneha Gurudayal singh Kande and another

vs.

M/s. Selvi Publicity and Consultant Private Limited and another

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

Court's or Judge's Orders.

Mr. Anjan De, Advocate for petitioners.
Mr. M. P. Khajanchi, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 23/06/2021

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 petitioners (original defendants) have approached this Court challenging a common order dated 09/08/2018, whereby applications at Exh.115 and 118 filed by the defendants have been rejected. The said applications were filed seeking recall of an order dated 31/03/2018 passed by the Court below on applications at Exh.103 and 104, which in turn were

applications seeking recall of an earlier order dated 15/04/2017, passed by the Court below on Exh.93.

3. It is contended on behalf of the petitioners that the order dated 15/04/2017 passed by the Court below was erroneous, because it has the result of permitting the respondents/plaintiffs to place on record documents after the evidence had commenced and this was procedurally flawed. It was submitted that the petitioners have a right to oppose such documents being brought on record and an opportunity to oppose was not granted to them by the Court below while passing the cryptic order dated 15/04/2017.

4. The learned counsel for the petitioners submitted that the petitioners were ready not to go into technicalities and if this Court passes an order permitting the petitioners to amend their written statement in the light of the said documents permitted to be placed on record, it would meet the ends of justice. It was also brought to the notice of this Court that during the pendency of the present writ petition, the respondent No.2 (original plaintiff No.2) has died and that an application for dismissal of the suit as abated has been filed before the Court below. But, due to the interim order of stay of

proceedings passed by this Court while issuing notice in the present writ petition on 04/02/2019, the said application is also not being taken up for consideration.

5. On the other hand, Mr. M. P. Khajanchi, learned counsel appearing for the respondents submitted that the petitioners certainly have an opportunity to oppose the said documents, because they are yet to be admitted in evidence. As regards amendment of written statement, it is submitted that the petitioners can make an appropriate application before the Court below. It is further submitted that the Court below has not yet passed any order on the application for dismissal of suit as abated filed by the petitioners.

6. Having considered the material placed on record and the submissions made on behalf of the rival parties, this Court is of the opinion that the petitioners cannot be said to have been deprived of any opportunity as of today to oppose the documents placed on record on behalf of the respondents. The petitioners can certainly raise their objection in an appropriate manner before the Court below, including by applying before the Court below for amendment of the written statement.

7. Therefore, this Court does not find any reason to interfere in the impugned order. The petitioners would be at liberty to move an application for amendment of the written statement, which the Court below will decide on its own merits.

8. Needless to say, the Court below shall also decide the application for dismissal of the suit as abated already filed by the petitioners, also on its own merits. The Writ Petition stands disposed of with above observations.

JUDGE