

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

WRIT PETITION NO. 331 OF 2022

Nanakram Hargundas Jagwani Vs. Naresh Satyanarayan Joshi

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

Court's or Judge's orders

Ms. Deepika Kukreja, Advocate for petitioner
Mr. R.K.Borkar, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/08/2022

1] Heard Ms. Kukreja, learned counsel for the petitioner and Mr. Borkar, learned counsel for the respondent.

2] The petition challenges the order dated 20.10.2021 passed by the learned trial Court, whereby the application for permission to lead secondary evidence in respect of agreements dated 3.2.2011 and 11.2.2011 has been granted.

3] It is contended by Ms. Kukreja, learned counsel for the petitioner that there is no foundational pleadings available for the purpose of leading secondary evidence and therefore, the learned trial court ought not to have granted the application, as the possession of the originals of these documents had been denied by the petitioner.

4] Mr. Borkar, learned counsel for the respondent supports the impugned order and submits that the pleadings in the counter claim lay down the foundational plea in this regard.

5] A perusal of the counter claim filed by the present respondent (pg. 32) indicates specific averment therein that the original of the agreement dated 11.2.2011 was handed over by the respondent to the petitioner on his demand for the purpose of preparing a draft sale deed and a xerox copy of the same was retained by the respondent, as his office-copy and this was done in the presence of one witness. That apart, a notice to produce under Section 66 of the Evidence Act was also tendered to the petitioner for the production of the original, which has been denied by the petitioner, on the ground that he is not in possession of the same. It is thus apparent that since the foundational fact of the above plea was available in the counter claim and the requirements of Section 66 of the Evidence Act were complied with, the learned trial Court has granted the application, in view of which I am not inclined to interfere in the impugned order. The petition is therefore dismissed. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
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Signing Date:17.08.2022 19:25