

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

WRIT PETITION NO.1475 OF 2022

(Ravindrakumar s/o Shikharchand Jain (Choudhary) Vs. Vimalkumar s/o Hazarilal Jain (Deodia)

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

Court's or Judge's orders.

Mr. A. K. Neware, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 15th MARCH, 2022.

The petitioner is the defendant in Regular Civil Suit 184/2014 which is instituted by the respondent seeking decree of possession and recovery of arrears of rent.

2. The defendant is aggrieved by the order dated 18.02.2022 rendered by the learned trial Judge whereby application Exhibit-87 preferred by the plaintiff for filing additional affidavit of Mr. Vivek, who is the son of the plaintiff, is allowed.

3. The plaintiff has examined himself. The other witness who is examined is the other son Mr. Vipin. The third witness who has filed an affidavit in lieu of oral examination-in-chief is Mr. Vivek who is also the son of the plaintiff. By allowing the application Exhibit-85, all that is done is to permit Mr. Vivek to file an additional affidavit on record. It is common ground that the cross-examination of

Mr. Vivek is yet to commence.

4. I see no error whatsoever in the order impugned.

5. Mr. Neware does argue that what is stated in the additional affidavit is not pleaded. The submission is consistent with what is observed by the learned trial Judge. However, this aspect can be looked into by the learned trial Judge while appreciating the evidence on record.

6. Mr. Neware invites my attention to the decision of the Hon'ble Apex Court in *Biraji @ Brijraji and Anr. v. Surya Pratap and Ors. 2020(1) SCC 729*. I am afraid reliance on the said decision is absolutely misconceived. The factual matrix in the decision cited was that after the evidence was closed by the plaintiff an application to summon the record relating to the leave of the defendant on the day of the adoption was moved. Presumably, it was the case of the plaintiff that the defendant was not present at the time of the adoption ceremony. It was to substantiate the contention that the defendant was not present, that the leave record was summoned. It is true that the absence of the pleading was one of the factors which weighed with the Supreme Court. However, the said decision turns on certain additional facts. The first is that the application was moved extremely belatedly and after the conclusion of the evidence. The trial was made time bound by the order of the High Court. Notwithstanding the dismissal of the first application seeking similar relief, the plaintiff again moved

an application for the same relief, to wit, summoning the service record of the concerned defendant.

7. In the factual matrix, I do not see any error in the order impugned.

8. It is, however, made clear, that the objection on the ground of absence of pleading shall be considered at an appropriate stage while appreciating the evidence on record.

9. Subject to the aforesaid observation, the petition is dismissed.

JUDGE

NSN