

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

Writ Petition No.4976/22

Gulab Chaturkar V Vimalabai and others

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

Court's or Judge's Orders

Mr. Tarun Parmar, Advocate for applicants.
 Mr. M.P. Karia, Advocate for a resp.nos. 2 to 7.

CORAM : AVINASH G GHAROTE, J.
DATE : 20-08-2022

Heard Mr. Parmar, learned Counsel for the petitioner and Mr. Kariya, learned Counsel for respondent nos. 2 to 7. Respondent no.1 is dead however respondent nos. 2 to 7 are the legal heirs already on record.

2. The petition challenges the order dated 12-08-2022 passed by the trial court below exh 1 proceeding the matter without arguments of the plaintiffs. It is contended that since an application under S.340 of the CrPC has been filed in MJC No. 660/22 the same needs to be decided first before the final decision of the suit. Reliance is placed upon the decision of Harish Malani V Haresh Malani in Civil Application No.2939/2017 in WP No.14038/17 decided on 26-04-2018 wherein it has been held that in case an application under Section 340 of Cr.P.C. is filed it has to be heard and decided first before deciding the WP. Similar is the proposition laid down in WP No.(M/s) of 2002 decided 09-01-2003 Syed Nasim Hussain Vs Additional Principal Judge Family Court.

3. The basic nature of allegation under section 340 of the Cr.P.C., is that it prescribes the procedure for cases mentioned in Section 195 Cr.P.C.

Section 195 CrPc contemplates prosecution for contempt of lawful authority of public servant, for offences against public justice and for offence relating to documents given in evidence. In such cases, if the Court comes to a conclusion that a document given in evidence has been tampered with as is the allegation in MJC No.660/22 then any decision on such a plea would have a material bearing upon the decision of the suit on merits as the said decision, shall have to be considered by the court while evaluating the evidence led in the suit. This indicates that decision of application under Section 195 r/w 340 shall have to be prior in point of time before the suit is decided on its merits. Mr Parmar, learned counsel for the petitioner submits that MJC No.660/22, is lying in the same court where RCS No.1468/2001 is pending. Considering which it would be necessary, for the learned trial court to decide MJC No.660/22 prior to deciding the RCS No.1468/01.

4. Considering which the impugned order is hereby quashed and set aside and the learned trial court is directed to decide MJC No.660/22 before deciding RCS No.1468/01. Mr. Parmar, learned Counsel for the petitioner further submits that no evidence is necessary to be recorded in MJC No.660/22 and the same can be decided on the basis of the documents filed therein. The statement is accepted. It is also made clear that while deciding RCS No. 1468/01 the petitioner shall be permitted to advance their arguments.

5. Since as per the statement of the petitioner MJC No. 525/19 relates to violation of order of injunction it can be decided separately. The petitioner shall appear the court on 22-08-2022 and shall advance his argument on MJC 660/22. The trial Court shall thereupon decide MJC No.660/22 by 25-08-2022 and hear the final arguments in RCS No. 1468/01 on 29-08-2022.

6. Petition is allowed in above terms. No costs.
7. Steno copy of this order be provided to the parties to act upon.

JUDGE

Deshmukh