

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

WRIT PETITION NO. 5567 OF 2022

Vishwajit s/o Manohar Deshmukh

vs.

Sandip Shankarlal Sojwani

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

Court's or Judge's Orders.

Mr. S. M. Vaishnav, Advocate for petitioner.

CORAM : MANISH PITALE J.

DATE : 13/09/2022

By this writ petition, the petitioner has challenged order dated 18/12/2021, 15/03/2022 as also 15/03/2022, claiming that the said order ought not to have been passed as a matter of course, even if the judgment of the Hon'ble Supreme Court in the case of *Rahul S. Shah vs. Jinendra Kumar Gandhi and others (2021) 6 SCC 418* was to be taken into consideration.

2. It is further contended that because of the said impugned orders, there is every likelihood that the petitioner will suffer an adverse order in an

application moved by the respondent under Order 38 Rule 5 of the Civil Procedure Code, which is pending.

3. A perusal of the impugned orders dated 18/12/2021 and 15/03/2022 would show that the Court below has merely directed the petitioner to disclose his assets on oath to the extent that he can be made liable in the suit for recovery of specific amount filed by the respondent.

4. The petitioner had filed an application at Exh.37 for review/recall of the order directing him to disclose his assets on oath. The Court below has quoted relevant paragraph of the said judgment of the Supreme Court in the case of *Rahul S. Shah vs. Jinendra Kumar Gandhi and others* (supra) and rejected the said application also.

5. This Court has perused the impugned orders, as also the judgment of the Supreme Court in the case of *Rahul S. Shah vs. Jinendra Kumar Gandhi and others* (supra). It is contended on behalf of the petitioner that since the word “may” is used in the relevant paragraph of the judgment of the Hon’ble Supreme Court, requiring the defendant to disclose his assets on oath, the Court below ought to have put

the petitioner to notice and thereupon exercised its discretion.

6. This Court is not convinced with the arguments raised on behalf of the petitioner for the reason that the drift of the judgment of the Hon'ble Supreme Court has to be appreciated in the backdrop of excruciating delays in execution of decrees and the extent to which the plaintiff/decreed holder is made to suffer in our legal system before he or she enjoys the fruits of the decree.

7. Insofar as the apprehension about the Court below being influenced by the impugned orders while deciding application under Order 38 Rule 5 of the CPC filed by the respondent, appropriate direction can be given.

8. In view of the above, the writ petition is dismissed. The Court below is directed to consider the application under Order 38 Rule 5 of the CPC filed by the respondent on its own merits, without being influenced by the impugned orders dated 18/12/2021, 15/03/2022 and 10/08/2022 passed by the Court below.