

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

WRIT PETITION NO. 4685 OF 2021

Kamlesh S/o Dharamdas Punekar & Another
Vs.
Chandrashekhar s/o Sukhmandas Punekar & Others

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

Court's or Judge's orders

Mr. D.N. Dani, Advocate for Petitioners
Mr. R.M. Sharma, Advocate for Respondent Nos. 1 to 4

CORAM : MANISH PITALE, J.

DATE : 12th APRIL, 2022

By this writ petition, the petitioners (original plaintiffs) have challenged orders passed by the Court of Joint Civil Judge (Senior Division), Nagpur (hereinafter referred to as the Trial Court), whereby application for permission to produce documents filed on behalf of the respondent Nos.1 to 4 has been allowed and another application for permission to lead evidence in the context of such documents has been granted in favour of the said respondents.

2. The petitioners have filed a suit for declaration, cancellation of partition deed, possession and permanent

injunction against the respondents herein. The respondent Nos.1 to 4 i.e. the original defendant Nos.1 to 4 filed their written statements and denied the claims made in the plaint on behalf of the petitioners. The parties led oral and documentary evidence in support of their respective stands and the Trial Court heard arguments on behalf of the rival parties. At the stage when the proceedings were closed for judgment, the respondent Nos. 1 to 4 moved application at Exh.179, for placing on record documents. It was submitted that the documents sought to be placed on record were public documents and despite best possible efforts they could not be placed earlier on the record of the Trial Court. It was claimed that the said documents were necessary to support the stand taken on behalf of the respondents in their respective pleadings and evidence recorded before the Trial Court. By the impugned order dated 17/09/2021, the Trial Court allowed the application despite vehement opposition on the part of the petitioners.

3. Thereafter, when the notice to admit documents was issued and documents were denied on behalf of the petitioners, the respondent Nos.1 to 4 moved application at Exh.189 for permission to lead additional evidence. By the impugned order dated 12/10/2021, the Trial Court

allowed the said application also and permitted the said respondents to lead evidence on the documents permitted to be produced on record.

4. This Court issued notice in the present petition and granted interim stay of further proceedings before the Trial Court. Mr. Dani, learned counsel has appeared on behalf of the petitioners. He submitted that a perusal of pleadings on record and also the relevant portion of the evidence led on behalf of the respondent Nos. 1 to 4 would show that the documents now sought to be produced are in the teeth of the pleadings and evidence so placed on record on behalf of the respondent Nos. 1 to 4. It was submitted that in the absence of pleadings, such documents could not have been permitted to be placed on record. There was no question of permitting respondent Nos. 1 to 4 to lead evidence in the context of such documents after the proceedings were closed for judgment before the Trial Court.

5. It was submitted that the trial Court failed to appreciate the true scope of power under Section 151 of the Code of Civil Procedure read with Order 18 Rule 17 thereof. The law laid down by the Hon'ble Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy**

reported in (2011) 11 SCC 275, was misapplied by the Trial Court in the facts and circumstances of the present case. The learned counsel placed specific reliance on the judgment of the Hon'ble Supreme Court in the case **Bagai Construction and Ors. Vs. Gupta Building Material Store** reported in 2013(14) SCC 1.

6. On the other hand, Mr. Sharma, learned counsel appearing for respondent Nos. 1 to 4 submitted that the impugned orders did not deserve interference for the reason that the Trial Court had correctly exercised its power under Section 151 of the Code of Civil Procedure to ensure that the entire material, relevant to the controversy between the parties, was placed before the Court before the judgment was rendered. It was submitted that in terms of the law laid down by the Hon'ble Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy** (supra), the said application could have been filed on behalf of the said respondents even when the proceedings had reached the stage of the arguments being over and the matter being reserved for judgment. It was submitted that a proper appreciation of the pleadings and material on record indicates that the documents sought to be placed on record and additional evidence sought to be led in that context was relevant to the main issue in controversy

between the parties and that allowing such application would assist the Trial Court in reaching proper findings on the issues that arose for consideration in the present case. On this basis, it was submitted that the writ petition deserved to be dismissed.

7. This Court has considered the pleadings on record. The statements made in the plaint as well as written statement indicate that there is indeed a controversy between the parties as to whether there was an earlier partition between them and as to what was the status of a particular property in a place called 'Thakkar Building, Gandhibagh, Nagpur', in the context of the property being used by either party for carrying on business. The pleadings indicate that points of controversy have arisen with regard to the aforesaid issues, which were identified by the Trial Court and evidence was led by the parties in that context. Although it is vehemently contended on behalf of the petitioners that the documents now sought to be produced are in the teeth of the pleadings on record on behalf of the respondent Nos.1 to 4 as also the admissions given in cross-examination, a perusal of the material on record indicates that apart from denying that the predecessors of the petitioners were using the said property for business, statements were indeed made that

the predecessor of respondent Nos.1 to 4 was carrying on business in the said property. There is no doubt about the fact that in cross-examination the witness of respondent Nos. 1 to 4 conceded that he had no documents to support such an assertion, but, that in itself cannot be a ground to disallow the application filed on behalf of the respondent Nos. 1 to 4 to place on record documents, which would support the stand taken on behalf of the said respondents. A perusal of the documents sought to be placed on record shows that they are indeed public documents. The nature of controversy between the parties does indicate that the documents would assist the Court in reaching appropriate conclusion on the point in controversy. The Trial Court has indeed taken into consideration the aforesaid aspect of the matter while allowing the applications at Exhs.179 and 189. The order allowing application at Exh.189 is in a way consequential to the order allowing the application at Exh.179.

8. This Court is of the opinion that disallowing such applications only on the ground that the matter was closed for judgment may lead to multiplicity of proceedings in the sense that the respondent Nos.1 to 4 may then attempt to place such documents on record at the appellate stage, which might create a situation for the matter being

remanded and the litigation between the parties being delayed only on that count. This Court is not making any comment on the documents allowed to be placed on record. Nonetheless, no case is made out by the petitioners for interference in the impugned orders. Insofar as the applicability of the judgment of the Hon'ble Supreme Court is concerned, a perusal of the judgment in the case of **K.K. Velusamy Vs. N. Palanisamy** (supra) shows that in paragraph No.15 thereof, it has been specifically observed that the convention that no application is entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but, it is not a straitjacket formula. The Hon'ble Supreme Court has referred to the discretion available to the Courts under Section 151 read with Order 18 Rule 17 of the Code of Civil Procedure to pass appropriate orders in the interest of justice. A note of caution is sounded in the said judgment, which is indicative of the fact where such applications are moved only for delaying proceedings, the Courts should take a strict view of the matter and disallow such applications.

9. A perusal of the impugned order shows that the Trial Court has itself taken note of the fact that both the parties have been diligently pursuing the matter and, therefore, filing of such applications on the part of

respondent Nos.1 to 4 cannot be termed as a delaying tactic.

10. Insofar as the judgment in the case of **Bagai Construction** (supra) is concerned, this Court is of the opinion that in the facts of the said case, the Hon'ble Supreme Court was satisfied that the applications had been moved before the Trial Court only to overcome lacunae in the plaint, pleadings as well as the evidence. This Court is of the opinion that such is not the case in the present matter. The Trial Court was justified in allowing the applications at Exhs.179 and 189, filed on behalf of the petitioners. Hence, the writ petition is found to be without any merit and it is dismissed.

11. At this stage, the learned counsel for the petitioners expressed an apprehension that the petitioners may now be left in the lurch in terms of steps that they could take before the Trial Court to counter what the respondent Nos.1 to 4 intend to present, in view of the applications being allowed.

12. Needless to say, the petitioners would be at liberty to cross-examine the witnesses of respondent Nos. 1 to 4 in

the context of leading additional evidence in the backdrop of the said documents permitted to be placed on record.

13. Apart from this, the petitioners would be liberty to take such steps as available in law in support of their own stand.

14. It is made clear that observations made in the present order shall not influence the Trial Court in proceeding with the matter on merits.

JUDGE