

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

WRIT PETITION NO. 121 OF 2022

Smt. Shobha Wd/o. Gajanan Pohane and others

vs.

Ranjan S/o Purushottam Darwhekar

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

Court's or Judge's Orders.

Mr. A. K. Choube and Mr. A. A. Choube, Advocate for
petitioners.

CORAM : MANISH PITALE J.

DATE : 08/07/2022

By this writ petition, the petitioners i.e. original plaintiffs are before this Court to challenge order dated 17/03/2021, passed by the Small Causes Court, Nagpur, whereby an application at Exh.81, moved on behalf of the petitioners to place on record a set of original documents and two maps has been rejected.

2. This Court has issued notice in the present writ petition, but the sole respondent despite service chose not to appear before this Court.

3. Mr. Choube, learned counsel appearing for the petitioners submitted that if the reasons stated in the impugned order are perused, there is factually incorrect finding rendered to the effect that the cross-

examination of the defendant was completed on 05/12/2019, and that the application at Exh.81, was filed thereafter on 06/02/2020. By inviting attention of this Court to the relevant documents, it was asserted that on 05/12/2019, the matter was adjourned till the next date for cross-examination, thereby indicating that the cross-examination was yet to be completed.

4. It was further submitted that in the application at Exh.81, the petitioners had stated cogent reason as to why such an application could not be moved earlier. By referring to the contents of the plaint, it was submitted that the documents sought to be brought on record were already indicated and that it was not as if new material was sought to be placed on record after the trial had commenced and the evidence of the plaintiffs was over. On this basis it was submitted that the Court below erred in observing that allowing the application would amount to reopening of the case.

5. This Court has perused the material on record. The relevant portions of the plaint do indicate that the petitioners had indeed referred to agreements of lease reduced into writing from April, 1989 onwards upto February 2003. The documents

sought to be brought on record do pertain to this time period. Therefore, it cannot be said that there is no material or basis in the original pleadings relatable to the documents sought to brought on record.

6. The material on record also indicates that the Court below erred in observing that cross-examination of the defendants was already completed on 05/12/2019. On the said date in the midst of the cross-examination, the case was adjourned, obviously for further cross-examination of the defendant.

7. A perusal of the application at Exh.81, would show that the reason put forth on behalf of the petitioners was that the said documents were found in a loft in one file, just prior to the date when the application was moved before the Court below.

8. In view of the above circumstances, this Court is of the opinion that the Court below could not have reached the conclusion that allowing the application at Exh.81, would amount to reopening of the case. After all, the entire purpose of a proceeding before the Court is to ascertain the truth of the matter on the basis of assertions made in original pleadings on behalf of the parties and supporting documents. Since there are pleadings on record in the original plaint itself with which the documents sought to be

brought on record can be said to be concerned, this Court is of the opinion that in the interest of justice the application ought to have been allowed.

9. In view of the above, the impugned order is quashed and set aside.

10. The application at Exh.81, is allowed in terms of the prayers made therein.

11. The Court below shall now proceed further in accordance with law.

12. Pending applications, if any stand disposed of.

JUDGE