

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

Civil Writ Petition No.5443/2021

Ramesh s/o Chewarchand Mohta Vs. Laxmidevi wd/o Prakash Buty & Ors.

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

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Court's or Judge's Orders

Shri P.D. Sharma, Advocate for the Petitioner.
Shri V.V. Bhangde, Advocate for Respondent Nos.1 to 3.
Shri R.R. Srivastava, Advocate for Respondent No.4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 5th JANUARY, 2022.

01] The Petitioner has challenged the order dated 16th December, 2021 passed by the District Judge-9, Nagpur under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (in short "C.P.C.")

02] Heard Shri P.D. Sharma, learned counsel for the Petitioner and Shri Kinkhede, learned counsel for Respondent Nos.1 to 3. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

03] The Respondent Nos.1 to 3 had filed a suit for eviction of Maratha Mandir. Respondent No.4, Rajkumar Mohta, son of the Petitioner put in his appearance as a proprietor of M/s. Maratha Mandir and contested the suit. The suit was partly decreed by judgment dated 22.03.2018. The defendant-M/s. Maratha Mandir filed an appeal before the District Court, Nagpur. During the pendency of the appeal, Pushpa Mohta, the wife of the Petitioner herein filed an application to implead her as a party respondent on the ground that she was the proprietor of the said M/s. Maratha Mandir. Said Pushpa Mohta died during the pendency of the application. Subsequent

thereto, the Petitioner filed an application to implead him as a party respondent. The said application was dismissed by the District Court. Being aggrieved by the said order, the Petitioner filed a Writ Petition No.4527/2021, which has been disposed of (Coram: Avinash G. Gharote, J.) *vide* order dated 07.12.2021.

04] A perusal of the said order reveals that the parties had consented that the Petitioner should be joined as party respondent. Learned counsel for the Petitioner had made a statement that *“on being added as a party respondent in appeal, he will submit his written notes of argument within one week, whereupon the learned Appellate Court may finally decide the matter within a period of fifteen days thereafter”*.

05] In the light of the said statement, the petition was disposed of by allowing the Petitioner to be impleaded as party respondent in the said appeal. Leave was also granted to the Petitioner to file his written notes and directions were given to the District Court to dispose of the appeal within 15 days therefrom.

06] Pursuant to the said order, the Petitioner filed his written notes and when the matter was at the stage of hearing, he filed an application under Order XLI Rule 27 of C.P.C. to permit him to adduce oral evidence to prove the documents, which are stated to be on record. The learned Judge has dismissed the application mainly on the ground that no such leave was granted to the Petitioner by this Court while disposing of Writ Petition No.4527/2021.

07] It is pertinent to note that the previous petition was disposed of, in view of the statement made by the Petitioner that he should be permitted to file his written notes. He had not sought leave

either to file written statement or to adduce the evidence. In the absence of pleadings, the Petitioner cannot be permitted to adduce any evidence.

08] Under the circumstances, no fault can be found with the order of the District Judge for dismissing the application for additional evidence under Order XLI Rule 27 of C.P.C. Hence, the petition is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

Vijay