

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

WRIT PETITION NO. 1179 OF 2022

Kishor S/o Baburao Bagulkar & Another -- Petitioners

Vs.

Rekha W/o Raju Timande & Another -- Respondents

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

Court's or Judge's orders

Mr. A.K. Choube, Advocate for Petitioners

CORAM : MANISH PITALE, J.

DATE : 24th JUNE, 2022

By this writ petition, the petitioners have challenged order dated 29/09/2021, passed by the Court of Civil Judge (Senior Division), Nagpur, whereby application at Exh.39, moved on behalf of the petitioners for issuance of witness summons to original defendant No.2 i.e. the respondent No.2 herein, has been rejected.

2. The learned counsel for the petitioners has relied upon judgment of this Court in the case of **Ravalnath Builders Vs. Sebastiano Escolastica Beztriz** reported in 2012(2) Mh.L.J. 292, to contend that there can be no bar in law for the petitioners to have move such an application to examine original defendant No.2 as witness.

3. This Court has considered the impugned order. The Court below has proceeded on the contents of the application at Exh.39 and it is found that the petitioners failed to divulge any ground or reason or purpose as to why they had moved the aforesaid application for issuance of witness summons to the original defendant No.2.

4. A perusal of application at Exh.39 would show that no error can be attributed to the impugned order passed by the Court below, simply for the reason that in the said application, other than stating that the petitioners desire to examine the original defendant No.2 and hence, permission may be granted, no reason has been put-forth. Merely by stating that it would be in the interest of justice for such permission to be granted, cannot be said to be enough.

5. At the same time, the purpose of the exercise before a Court of law is to determine the truth of the matter and to decide as to where justice lies. Therefore, if any step towards achieving the said goal is intended to be taken, the Court ought to consider the same on merits.

6. In the present case, since the petitioners themselves could not demonstrate merit in their prayer for issuance of witness summons to the original defendant No.2, no fault can be found with the Court below in passing the impugned order.

7. But, in the interest of justice, this Court is inclined to give appropriate directions in the present petition.

8. Accordingly, the writ petition is dismissed.

9. Nonetheless, the impugned order will not come in the way of the petitioners to move an appropriate application for the relief that they sought while filing application at Exh.39, subject to the petitioners placing on record appropriate reasons / grounds for moving such an application.

JUDGE