

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

WRIT PETITION NO.155 OF 2022

(Ramlal s/o Karamchand Soni, thr. legal representatives Smt. Nirmalabai wd/o
Ramlal Soni and others Vs. Ghanshyam Baburao Farkade and others)

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

Court's or Judge's orders.

Mr. Harsh I. Kothari, Advocate for Petitioners.
Mr. Arun S. Agrawal, Advocate for Respondent 2.

CORAM: ROHIT B. DEO, J.

DATE: 17th FEBRUARY, 2022.

The petitioners are the legal heirs of the original plaintiff Ramlal Soni who instituted Special Civil Suit 280/1991 seeking decree of specific performance.

2. The suit is dismissed by the trial court by judgment and decree dated 29.10.2005.

3. In Regular Civil Appeal 244/2012 which is filed challenging the judgment and decree of dismissal of the suit, the petitioner – plaintiff sought to implead as many as 51 additional defendants on the premise that the additional defendants are subsequent purchasers. It appears that the said application is allowed, with the result that the plaintiff has impleaded additional defendants as defendant 2 to 52.

4. It would be relevant to note, that from time to time this Court has directed the learned Appellate Court to

decide the appeal expeditiously. According to the learned counsel for respondent 2, who is appearing *suo motu*, it is with the intent to delay the hearing of the appeal that the plaintiff – appellant has preferred the present petition.

5. Adverting to the facts, the petitioner preferred an application in appeal seeking issuance of summons to the added defendants. The prayer clause reads thus:

- i. Allow the present application.*
- ii. Issue suit summons against newly added defendants no.2 to 52 in Regular Civil Suit No.280/1991, as aforesaid in the interest of justice.*
- iii. Direct the defendant no.2 to 52 to file their respective written statement/s if any, within stipulated time period in accordance to law, in the interest of justice.*

6. By the order impugned dated 03.12.2021 the Appellate Court was pleased to reject the application noting that the newly added defendants are well aware of the proceedings and have also been served with the amended plaint. I further note from the reply preferred by most of the added defendants in appeal, that even the newly added defendants are of the view that issuance of summons would not be necessary.

7. Strangely, the plaintiff sought a direction from the Appellate Court that the newly added defendants be

directed to file written statement. The Appellate Court has rightly held, that a party cannot be compelled to file written statement, and this also appears to be the perspective of the newly added defendants.

8. I am satisfied that the attempt of the plaintiff appears to be to overreach the directions issued by this Court and to delay the hearing of the appeal.

9. The petition is dismissed.

10. The Appellate Court shall decide the appeal, in any event, within the next sixty days.

JUDGE

NSN