

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 123 OF 2022**

Smt.Niranjan w/o. Vinod Gajbhiye vs. Smt. Alka w/o. Shailesh Vaidya

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

Court's or Judge's Orders.

Mr. S. N. Nandeshwar, Advocate for petitioner.
Mr. N. B. Bargat, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 15/06/2022

In the light of the peculiar facts and circumstances of the present case and the contentions raised on behalf of the petitioner, this Court had found it fit to call for a report from the Principal District and Sessions Judge on the question as to whether there was any manipulation in the Court record. A report dated 25/03/2022 is received from the Principal District and Sessions Judge, who opined that there does not appear any manipulation in the order passed on Exh.33 or the Roznama dated 23/11/2021 and 29/11/2021, on the basis that the Roznama is maintained as available on the e-Courts website.

2. This Court has heard the learned counsel for the rival parties. The petitioner is aggrieved by

order dated 23/11/2021 passed by the Court of Civil Judge Senior Division, Nagpur in Regular Civil Suit No.1038 of 2019. By the said order an application at Exh.33 filed by the petitioner for correction of typographical errors in the recording of cross-examination of the petitioner, has been rejected. It is contended by the learned counsel appearing for the petitioner that apart from the fact that the order is without proper reasons, it is in the teeth of the record of the Court below.

3. It is contended that the cross-examination of the petitioner was conducted on 09/11/2021 and immediately on the next day i.e. 10/11/2021 the petitioner was constrained to file the aforesaid application at Exh.33, for the reason that according to the petitioner there were two typographical errors in paragraph 3 and paragraph 7 of the recording of cross-examination of the petitioner dated 09/11/2021. The petitioner sought correction of the typographical errors. This application was opposed by the respondent.

4. The learned counsel for the petitioner contends that the said application at Exh.33 was adjourned on 23/11/2021 for the next date of hearing i.e. on 29/11/2021, but later to the shock

and surprise of the petitioner, it was found in the Roznama that the Court had recorded that the application at Exh.33 stood rejected and that the case was adjourned for evidence to 29/11/2021. The learned counsel for the petitioner submitted that a print out of the recording in the Roznama for the date 23/11/2021 at page No.46 of the present petition shows that the case was adjourned for orders on Exh.33 to the next date i.e. 29/11/2021 and that thereafter, it appears that there was correction / change made in the Roznama since the print out taken on a later date shows that in the Roznama it was recorded that the order was passed on Exh.33, which stood rejected.

5. The learned counsel further invited attention of this Court to copies of the Roznama issued by the Court below to contend that the assertion made on behalf of the petitioner was fortified by the fact that as against the entry in the Roznama for the date 23/11/2021, there was no signature of the Judge, while for entries concerning other previous and later dates, the signature of the Judge was found. This raised clear suspicion about the manner in which the application was dealt with and decided by the Court below. On this basis, it is submitted that the impugned order deserves to be set

aside and the application at Exh.33 ought to be allowed.

6. On the other hand, the learned counsel appearing for the respondent submitted that there was no provision in the Civil Procedure Code for moving such an application for correction of typographical errors in the recording of cross-examination of the witness. On this basis, it was submitted that the application at Exh.33 itself was not maintainable. It was further submitted that the allegations made on behalf of the petitioner as regards the Roznama of the Court was a matter upon which this Court may decide on the basis of the record available. It was emphasized that the report of the Principal District Judge clearly records that there is no manipulation and that therefore, the present petition deserves to be dismissed.

7. This Court is of the opinion that despite the report submitted by the Principal District and Sessions Judge that there appears to be no manipulation, this Court finds that the contentions raised on behalf of the petitioner ought to be taken more seriously. This is evident from the copy of the Roznama placed on record at page No.48 and 49. It is contended on behalf of the petitioner that only as

against the entry in the Roznama for the date 23/11/2021, there is no signature of the judge, while on all other entries signature of the Judge is found.

8. There is material discrepancy between the print out of the Roznama from the website for the date 23/11/2021 as placed at Exh.46 of the petition and the print out of the said date obtained on a later date. This gives credence to the suspicion raised on behalf the petitioner that the order now found on the Roznama for the date 23/11/2021 is either a correction or a modification or a change and that it is not a proper manner in which the application at Exh.33 could have been dealt with.

9. This Court is of the opinion that such discrepancy clearly indicates at least one thing, which is that the application at Exh.33 was neither heard nor disposed of in a satisfactory manner. This Court would have gone further in detail as regards the manner in which the Roznama has been either modified or changed, but the grievance of the petitioner can be addressed without going into further details. This Court also finds, after perusal of the impugned order dated 23/11/2021 filed at page 47 of the petition, that the Court below has not disposed of the application in a satisfactory manner.

Proper reasons ought to be attributed as to why the application did not deserve to be granted. It needs to be emphasized that the Court is supposed to decide the dispute between the parties, on the basis of granting fair opportunity to them and for ascertaining as to where justice lies. Therefore, it is all the more important that the manner in which the proceedings are conducted by the Courts are not only fair but also appear to be so to the rival parties.

10. In view of the above, this Court is of the opinion that the application at Exh.33 deserves to be decided afresh. Accordingly, the writ petition is partly allowed.

11. The impugned order dated 23/11/2021 is quashed and set aside.

12. The Court below is directed to consider the said application at Exh.33 afresh on its own merits. This Court is not expressed any opinion on the merits of the matter.

13. Proceedings before the Court below are expedited.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*17.06.2022
14:45