

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

WRIT PETITION NO. 2761 OF 2018

Shri Shrikant Ramchandra Deshpande,
Aged about 61 years, Occ. Agriculturist
R/o Gadgenagar Pulgaon, Tah. Devli
Dist. Wardha

...Petitioner

Through POA his next friend Sau.
Smita Shrikant Deshpande, Aged 52
years, Occ. Household R/o
Nachangaon Road, Pulgaon, Dist.
Wardha

// VERSUS //

1. Mr. Sanjay Abhaykumar Badnore,
Aged about 61 years, Occ. Agriculturist
R/o Mahavir Chowk, Nachangaon
Road, Pulgaon, Dist. Wardha
2. Rajkumar Sheshraoji Tarpate
Aged about 51 years, Occ. Business
R/o Plot No. 5, Jaitala Road, Nagpur
440 022

Petition is dismissed in default
against respondent no.2 vide
Registrar Judicial Order dated
2.11.2018

... Respondents

Shri V.S.Bapat, Advocate for the petitioner.
Shri D.R.Bhoyar, Advocate for the respondent no. 1.

CORAM : ANIL S. KILOR, J.

DATED : 16th JUNE, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The rejection of application Exhibit 69 filed under Order XIV Rule 5 read with Section 151 of Code of Civil Procedure (in short hereinafter referred as “CPC”), for framing of additional issues, vide order dated 4th January, 2018, passed by Civil Judge, Junior Division, Pulgaon in Regular Civil Suit No. 23 of 2012, is under challenge in this writ petition.

3. The petitioner is the original plaintiff who filed a suit for declaration and for cancellation of sale-deed. In the plaint, more particularly in paragraph 11, the plaintiff has pleaded that he did not receive a single paisa towards the sale consideration of the suit property. Whereas, the defendant no.1 in his written statement has pleaded that the plaintiff received the amount of Rs.1,05,000/- from the defendant no.1 and the defendant no.2 has withdrawn the amount from the bank as per the order and direction of the plaintiff. It is further stated that the plaintiff received the amount and directed the defendant no.2 to execute the sale-deed of Plot No.39 in favour of the defendant no.1. The plaintiff also given a receipt of the sold amount to the defendant no.1.

4. The above referred pleadings gave cause for filing an application under Order XIV Rule 5 of the CPC whereby the plaintiff sought to add three issues namely (1) Does the defendant no.1 prove that, defendant No.2 has withdrawn amount from the bank as per order and direction of the plaintiff ?; (2) Does the defendant no.1 prove that the plaintiff has received the amount of consideration Rs.1,05,000/- and the plaintiff has given a receipt to him?; and (3) Does the defendant no.1 prove that the plaintiff after receiving the amount direct to defendant no.2 to execute the sale deed of plot no. 39 to his favour ?

5. The said application came to be rejected vide impugned order dated 4th January, 2018 passed below Exhibit 69, the same is the subject matter of the present writ petition.

6. Learned counsel for the petitioner at the outset states that he is not pressing the additional issue Nos.1 and 3, as stated in the application Exhibit 69 but pressing the only additional issue no.2.

7. It is the case of defendant no.1 that plaintiff received the amount of Rs.1,05,000/- from the defendant no.1 and it is the case of the plaintiff that he did not receive a single paise towards the sale

consideration of the suit property, I am of the opinion that the plaintiff has rightly applied for an additional issue no.2 as the burden lies on defendant no.1 to prove that the plaintiff has received the amount of Rs.1,05,000/- towards the consideration from the defendant no.1.

8. The reasons for rejection of application as noted by the learned trial Court in paragraph 7 of the impugned order, read thus:

“After the amendment has been carried out by the defendant, the plaintiff has not denied the fact which has been raised by the defendant by the way of amendment in his consequential amendment. Hence, as per the affirmation of the plaintiff, he is having a burden to prove the fact that he has not received the consideration for the alleged sale-deed. This burden can not be shift unless it has been proved by the plaintiff. The material preposition of the defendant raised by him after the amendment has not been denied by the plaintiff at all. Hence, under such consideration, I do not find any substance in the contention of the plaintiff for framing the additional issues under Order 14 Rule 5 of Civil Procedure Code. Resultantly, I proceed to pass following order.

Order

1. The application vide Exh.69 is hereby rejected.
2. No order as to costs.”

9. As I have already held that in view of the pleadings of the defendant no.1 in the written statement, the burden lies upon the defendant no.1 to prove the said fact. Thus, the learned trial Court has

erroneously held that because the plaintiff has not denied the said fact by making consequential amendment, the burden will lie upon the plaintiff to prove the fact that he has not received the consideration amount from the defendant no.1. Accordingly, the impugned order needs to be quashed and set aside. Hence, I pass the following order.

- i. The writ petition is allowed;
- ii. The Order Below Exhibit 69 dated 4th January, 2018 passed by Civil Judge, Junior Division, Pulgaon in Regular Civil Suit No. 23 of 2012, is hereby quashed and set aside;
- iii. The application Exhibit 69 for framing of additional issues is partly allowed to the extent of issue No.2 mentioned in the application.

[ANIL S. KILOR, J.]