

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

WRIT PETITION NO.2469 OF 2018

[Dr. Yashwant s/o Shankar Mashankar .vs. Nootan Vidarbha Shikshan Mandal and others]

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

Court's or Judge's orders

Shri A.M. Sudame, Advocate for Petitioner,
Shri N.S. Deshpande, Advocate with Shri M. Mate, Advocate for Respondent Nos.1, 2,
6, 7, 9, 11 to 13.
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CORAM : ANIL S. KILOR, J.

DATE : 5th JUNE, 2023.

The order below Exh.63 dated 22.02.2018 passed by the 2nd Joint Civil Judge, Senior Division, Amravati in Regular Civil Suit No.45/2010 rejecting the application moved by the petitioner for re-casting of issue, is under challenge in this petition.

2. The petitioner is the original plaintiff, who filed a suit for declaration and prohibitory injunction. It is the case of the plaintiff that the petitioner was elected as President of the respondent no.1-Trust and by undue influence and coercion, the respondents obtained a resignation letter from the plaintiff on 05.02.2010. Thereafter, the petitioner issued notices to all the members on 19.02.2010 about the withdrawal of resignation. However, the respondents made believed that on 25.02.2010 a meeting was held and the resignation of the petitioner was accepted in the said meeting and therefore, the suit was filed.

3. The suit was subsequently amended and in para 3 the petitioner tried to canvass that on 25.2.2010 he had been to the office of the society and he was there up to 3.30 pm and no one was present in the office of the society and despite the same, it was shown that on 25.2.2010 the meeting was held and in the said meeting, defendant nos.3, 4, 6, 7 and 9 to 13 were present along with defendant no.2.

4. In the said backdrop, following issues were framed by the learned Trial Court, including additional issue no.5-A.

- (1) Does the plaintiff prove that his resignation letters dated 12/02/2010 is got executed and produced by undue influence coercion etc.?
- (2) Whether cause of action of suit is survived.?
- (3) Whether this Court has jurisdiction to try and decide present suit.?
- (4) Whether the plaintiff is entitled to declaration as prayed.?
- (5) Whether the plaintiff is entitled to relief of injunction as prayed.?
- (6) What order and decree.?

Additional Issue

- (5A) Does plaintiff prove that meeting dated 25-2-10 per se false and fabricated.?

5. The petitioner thereafter moved an application Exh.63 for re-casting of issue No.5A as follows :

“Whether the defendants prove that they have properly and legally conducted the meeting on 25.02.2010 and minutes of meeting were properly recorded.?”

6. The said application came to be rejected vide impugned order which is the subject matter of the present writ petition.

7. Shri Sudame, learned counsel for the petitioner, submits that, while framing issue no.5-A, the learned Trial Court shifted the burden on the plaintiff to prove that meeting dated 25.2.2010 per se false and fabricated. According to Shri Sudame, the burden should be on the defendants to prove that they have properly and legally conducted the meeting on 25.2.2010 and minutes of meeting were properly recorded. He therefore submits that the application for re-casting of issue no.5-A was rightly moved, however, without considering the said application in its right perspective, the learned Trial Court rejected the same. He therefore submits that impugned order is erroneous and liable to be quashed and set aside.

8. Shri Deshpande, learned counsel for the respondents, strongly opposed the present petition and submits that by way of amendment and as the plaintiff has tried to canvass that no meeting was held on 25.2.2010, the burden would lie upon the plaintiff to show that the meeting dated 25.2.2010 per se false and fabricated. It is submitted that therefore the learned Trial Court has rightly framed the issue no.5-A and rejected the application for re-casting of issue.

9. In light of the rival contentions, I have perused the record and the impugned order. There is no dispute that in para 5d of the plaint, it is the case of the plaintiff that he had been to the office on 25.2.2010 to inform the defendants not to take any kind of illegal meetings and to make aware them regarding the suit. It is further stated that the plaintiff had been to the office even before 3.30 p.m. Except the Secretary, no one was present there and therefore, the plaintiff was shocked and surprised to see that though no one were present up to 3.30 p.m. on 25.2.2010, still the Minutes books were containing the remark regarding meeting scheduled on 25.2.2010 and it was shown defendant no.3, 4, 6, 7, 9, 10, 11, 12 & 13 were present along with defendant no.2 and the Minutes books were bearing their signature though they were not present, more particularly from 3 pm onwards.

10. Thus, considering the specific case of the plaintiff that no meeting was held on 25.2.2010, I am of the opinion that the leaned Trial Court has rightly framed the issue no.5-A casting the burden on the plaintiff to prove that meeting dated 25.2.2010 per se false and fabricated.

11. In the circumstances, I do not find any illegality in rejecting the application Exh.63 for re-casting of issue. Hence, the writ petition is dismissed.

(ANIL S. KILOR, J.)