



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

WRIT PETITION NO.5121 OF 2023

Sandip Prabhakar Shirpurkar .Vs. Shashank Prabhakarrao Shirpurkar through LRs
and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.J. Topale, Advocate for petitioner.

Shri R.D. Dhande, Advocate for respondents.

CORAM : ANIL S. KILOR, J.

DATED : 28/08/2023

1. In the present matter, the application moved to produce the witness whose name was not mentioned in the list submitted under Order XVI, Rule 1 of the Code of Civil Procedure (CPC), came to be allowed by the learned trial Court vide order dated 03.04.2023 passed by the 2nd Jt. Civil Judge, Junior Division, Arvi in R.C.S. No.48 of 2020, the same is the subject matter of the present writ petition.

2. The learned counsel for the petitioner argues that, without showing and without compliance of sub-rule (3) of Rule 1 Order XVI of the CPC more particularly, without showing sufficient cause for the omission to mention the name of such witness in the list under Order XVI, Rule 1 of the CPC, the application was moved and without seeking such compliance, the learned trial Court allowed the same. He, therefore, submits that, the impugned order is illegal and bad in law.

3. The learned counsel for the respondent argues that, since the respondent has produced the witness and the respondent does not want any assistance of the court to produce the witness, the application under Rule 1-A of Order XIV of the CPC and therefore, sub-rule (3) of Rule 1-A of Order XVI of the CPC will not apply to this case. For this purpose, he is placed reliance on a judgment of the Hon'ble Supreme Court of India in the case of *Mange Ram Versus Brij Mohan*¹.

4. In light of rival contention, I have perused the record and the impugned order.

5. Even if the argument of the learned counsel for the respondents is accepted that, the respondents do not want any assistance of the trial Court to produce the witness without summons and therefore, their application is under Rule 1-A of Order XVI of the CPC, the opening line of the said rule 1-A says that, "Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give or to produce document".

6. Thus, it is evident that, under rule 1-A of Order XVI of the CPC, says that, any party to the suit may, without applying for summons under rule 1, bring any

1 1983 DGLS (SC) 194

witness to give evidence or to produce documents subject to provisions of sub-Rule 3. Sub-Rule 3 says that, the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

7. After going through the contents of the application Exh.78, no sufficient cause has been shown by the respondents for the omission to mention the name of the witness in the list under Order XVI, Rule 1 of the CPC.

8. It is pertinent to note that, earlier similar application was moved however, in the said application the names of the witnesses were not mentioned therefore, it is withdrawn and the second application Exh.78 was filed. In the application Exh.78, the name of witness was mentioned but no cause has been shown for the omission to mention the name of such witness in the list submitted under Order XVI, Rule 1 of the CPC.

9. In the circumstances, there is no compliance of Order XVI, Rule 1(3) of the CPC. Hence, I am of the opinion that, the judgment cited by the learned counsel for the respondents are of no help to the respondents.

Accordingly, I find substance in the submission of the learned counsel for the petitioner that, in absence of compliance of Order XVI, Rule 1(3) of the CPC, no application under Rule 1-A of Order XVI of the CPC can be entertained.

10. However, the learned trial Court without seeking compliance of Order XVI, Rule 1(3) of the CPC allowed the application. In that view of the matter, I am of the considered view that, the order below Exh.78 needs to be quashed and set aside. Accordingly, I pass the following order:

- i) The writ petition is **allowed**.
- ii) The orders dated 03.04.2023 passed by the 2nd Jt. Civil Judge, Junior Division, Arvi in R.C.S. No.48 of 2020, is hereby quashed and set aside.
- iii) Liberty is granted to the respondents to apply afresh if he so desire, with compliance of order Order XVI, Rule 1(3) of the CPC.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE