

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

WRIT PETITION NO.3946 OF 2022

Meera W/o Shankarlal Bhutada and another .Vs. Chandrashekhar S/o Sukhdeo Daga
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 Y.J. Chandurkar, Advocate for the petitioners.

Shri V. Giramkar, Advocate for the respondent Nos. 1 to 7.

Shri A.P. Bhuibhar, Advocate for the respondent Nos.8 to 10.

CORAM : ANIL S. KILOR, J.

DATED : 10/01/2023

1. Heard.

2. In this writ petition, the order dated 21.02.2022 passed below Exh.57 by the learned Civil Judge Senior Division, Amravati is under challenged whereby the learned trial Court allowed the application for fixing the case for Court Commissioner report.

3. Shri Chandurkar, learned counsel for the petitioners submits that the proceedings filed in the year 2014 for restoration, in which the Court Commissioner was appointed for recording the evidence of the witnesses by the High Court. The Court Commissioner accordingly issued notice to the lawyer of the non-applicant informing the date of recording of evidence as 14.03.2020 at the house of

Dr. Jyoti Kalantri at Saturna, Amravati. However, on the said date, the house of the witness was found locked and therefore, the evidence could not be recorded. He further submits that though the opportunity was granted, the evidence could not be recorded and therefore, after such a long gap, allowing the application below Exh.57 is illegal and not sustainable in the eyes of law.

4. On the other hand, Shri Giramkar, learned counsel for the respondent Nos.1 to 7 and Shri Bhuibhar, learned counsel for the respondent Nos.8 to 10 supports the order of the learned trial Court.

5. I have perused the documents filed along with the petition.

6. There is no dispute that the High Court has appointed Court Commissioner to record the evidence of witnesses on behalf of the applicant namely Dr. Jyoti Kalantri. There is nothing to point out that a notice was issued to Dr. Jyoti Kalantri giving intimation about visit of Court Commissioner, for the purpose of recording her evidence.

7. The notice which is placed on record is issued by the Court Commissioner on 05.03.2020 addressed to advocates of the applicant as well as the non-applicant.

8. In the notice, there is nothing to point out that any instructions were issued by the Court Commissioner to the lawyers to intimate the witnesses that the evidence would be recorded on 14.03.2020. Moreover, even no document is produced on record to show that the witness had any knowledge about visit of Court Commissioner for recording her evidence on 14.03.2020.

9. Thus, considering the above facts coupled with the fact that from 25.03.2020 there was a lock down, I am of the opinion that no error has been committed by the learned trial Court in allowing the application under Exh.57. In that view of the matter, the writ petition is **dismissed**.

JUDGE