

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4786 OF 2018

1. Kaushalyadevi wd/o Mulchand Joshi,
Aged about 76 Years, Occu: Housewife.
2. Sohan s/o Late Mulchand Joshi,
Aged about 72 years, Occu: Retired.
3. Tarachand s/o Late Mulchand Joshi,
Aged about 60 years, Occu- Driver.
4. Durgaprasad s/o Late Mulchand Joshi,
Aged about 49 years, Occu: Priest.
5. Gopaldevi wd/o Satyanarayan Joshi,
Aged about 78 years, Occu: Housewife.
6. Sunita wd/o Subhash Joshi,
Aged about 44 years, Occu: Housewife.
7. Yogesh s/o Late Subhash Joshi,
Aged about 25 years, Occu: Business.
8. Shubham s/o Late Subhash Joshi,
Aged about 20 years, Occu: Student.
9. Lalita wd/o Mohanlal Joshi,
Aged about 65 years, Occu: Housewife.
10. Rakesh s/o Late Mohanlal Joshi,
Aged about 40 years, Occu: Private.

11. Girish s/o Late Mohanlal Joshi,
Aged about 35 years, Occu: Private.
12. Aatish s/o Late Mohanlal Joshi,
Aged about 30 years, Occu: Private.

All are residents of Subhash Road,
Cotton Market, Nagpur-440018.

.... **PETITIONERS.**

// **VERSUS** //

Shri Hanuman Mandir Trust,
Through its President Shri N.N. Thengre,
Subhash Road, Cotton Market,
Nagpur-440018.

.... **RESPONDENT.**

Shri N.B. Ramteke, counsel for the Petitioners.
Shri N.Y. Thengre, counsel for the Respondent.

CORAM : **ANIL S. KILOR, J.**
DATED : **12/01/2023.**

ORAL JUDGMENT :

1. Heard learned counsel for the petitioners and the learned counsel appearing for the respondent.
2. **RULE.** Rule made returnable forthwith.
3. Learned counsel for the petitioners seek permission to delete the names of petitioner Nos. 1, 2 and 12.

4. Permission is granted to delete the names as prayed for.

5. The order impugned in this Writ Petition is dated 20/03/2018 passed by the learned 3rd Joint Civil Judge Senior Division, Nagpur rejecting the application order below Exhibit-19 filed under Section 11 of the Code of Civil Procedure, 1908 for dismissal of counter claim filed by the defendant, as it operates res-judicata.

6. After going through the order, it is evident that the application was rejected only on the ground that a copy of the judgment was not filed by the petitioners/plaintiffs to substantiate his case that it operates as a res-judicata.

7. The learned counsel for the plaintiffs/ petitioners submits that the copy of the judgment was on the record and without looking into it, the application was rejected.

8. The learned counsel for the respondent is not disputing the fact that the copy of the judgment was on record. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the learned trial Court to decide the application at Exhibit No.19 afresh. Accordingly, I pass the following order:

- i) The Writ Petition is partly **allowed**.
- ii) The impugned order dated 20/03/2018 passed by 3rd Joint Civil Judge Junior Division, Nagpur in Special Civil Suit No. 921/2017 is hereby quashed and set aside.
- iii) The learned trial Court is directed to decide the application-Exhibit No.19 afresh after hearing both the parties, in accordance with law.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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