

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

Writ Petition No.5120/2022
(Pankaj V Fashion Planet and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. A.M. Quazi, Adv for petitioner.
Mr. S.S. Sharma, Adv for resp. nos. 1 and 2.
Mr. Masood Shareef, Adv for resp. nos. 3 and 4.

CORAM : AVINASH G GHAROTE, J.
DATE : 13-06-2023

Heard Mr. Quazi, learned Counsel for the
petitioner, Mr. Sharma, learned Counsel for respondent
nos.1 and 2 and Mr. Shareef, learned Counsel for
respondent nos. 3 and 4.

2. The petition questions the order dated
07-07-2022 passed below Exh-103 an application filed by
the petitioner seeking directions to defendant nos.1 and 2
to cross examine the defendant no.3 prior to the cross
examination by the plaintiff on the ground that defendant
nos.1 and 2 as well as defendant no. 3 were in collusion
with each other.

3. The learned trial Court by the impugned order
has rejected the application holding that the allegation of
collusion has not been demonstrated.

4. The factual matrix of the present matter is as under :-

5. The premises in question are three shop block nos. 9, 10 and 11 of Municipal House No. 19/9 situated on the ground floor and mezzanine floor of the building known as Poonam Towers, Palm Road, Civil Lines, Nagpur.

6. These shop blocks admittedly were in possession of the defendant nos.1 and 2 under an agreement of sale dated 28-11-2012 between them and the defendant no. 4 a company, which was for financial consideration of Rs. 2.54 Crore. As the defendant nos.1 and 2 were unable to complete the transaction, it is contended in the plaint that with the consent of the defendant no. 4, the same were agreed to be transferred to the plaintiff under an agreement dated 07-10-2013 for a consideration of Rs. 3.11 Crores. It is also contended that the keys to the said shops were handed over to the plaintiff to start the renovation work. The part consideration of Rs. 32 Lakh is said to be paid partly to the defendant nos.1 and 2 and partly to the defendant no.4 under the instructions of the defendant nos.1 and 2. It is further contended that on receipt of the possession, on 04-02-2014, the plaintiff had commenced the work of renovation of the aforesaid shop blocks. On 09-10-2014, it was found that the

defendant no.3 had taken over the forcible possession of the said shop blocks purportedly under an agreement, in which the entire shares of the defendant no. 4 company stood acquired by defendant no.3. It is equally material to state that defendant no. 3 is the original owner of the property.

7. In view of the aforesaid dispossession, a suit under Section 6 of the Specific Reliefs Act came to be filed by the plaintiff/petitioner against the respondents. In this suit, the defendant nos.1 and 2/respondents filed their written statement on 29-07-2015 and admitted the agreement dated 07-10-2013 executed by them in favour of the plaintiff. It was also admitted that part of the consideration was paid to the respondent no. 4 company on various dates. It is further admitted in para 6 (pg 41) that on instructions of defendant no. 4, the defendant no.2 had handed over one set of keys of the aforesaid premises to the plaintiff. It is however also material to note that the defendant nos.1 and 2 in the written statement also admitted that the transaction has been made by defendant nos.3 and 4 regarding transfer of shares to defendant no.4 company at Calcutta and further denied that any physical possession was handed over to the plaintiff. Surprisingly, defendant nos. 3 and 4 filed a common written statement alleging collusion in between

defendant nos.1 and 2 on one hand and petitioner/plaintiff on the other. It was further claimed that the defendant nos. 1 and 2 in pursuance to an agreement dated 06-04-2009, between themselves and defendant no.4, had handed over the possession of the suit property to defendant nos.3 and 4 on 25-09-2014 which was confirmed in writing on 26-09-2014. It is thus clear that the defendant no.3 claims to have been put into possession of the property in question on 25-09-2014 by the defendant nos.1 and 2 which act was subsequent to the agreement dated 07-10-2013 in favour of the plaintiff. What is also material to note is that the defendant no.3 was never in the picture till 25-09-2014 even as per the written statement of the defendants (pg 56).

8. It is therefore apparent that the averments in the written statement of defendant nos.1 and 2 on the one hand and that of the defendant nos.3 and 4 on the other, clearly point out a nexus between them. Though a plea has been raised by defendant no.3, that the plaintiff and defendant nos. 1, 2 and 5 acted in collusion with each other, however the very averment in the written statement of the defendant nos. 1 and 2 on the one hand and that of the defendant nos.3 and 4 on the other, do not support this contention. It is also material to note that the defendant no.3, has stepped into the shoes of defendant

no.4 on account of purchase of share of defendant no.4 as admitted in their written statement and therefore the interest of defendant no.3 and that of the defendant no.4, now stand in common.

9. In that view of the matter, it would be appropriate that the defendant nos.1 and 2, to first cross examine the defendant no.3, prior to the plaintiff. This position is clearly spelt out from the judgment of this Court in Sau. Kalpana Navneet Samarth and another vs Dr Smt. Seema Arun Mankar thr. attorney Sachin Taley and another (WP No. 7537/2019, decided on 15-11-2019), which holds that not only the written statement, the subsequent events will also have to be taken into consideration for the purpose of determining the sequence of cross examination. In this context, it is also necessary to note that the defendant nos. 1 and 2 have not stepped into the witness box for leading any evidence.

10. In the light of above position, the impugned order is hereby quashed and set aside and the application below Exh-103 is hereby allowed.

11. The parties shall appear before the trial Court on 20-06-2023, on which date the defendant no. 3 shall present himself for cross examination which shall be completed by the defendant nos.1 and 2 on the same date,

whereupon the plaintiff shall commence his cross examination and complete it within the shortest possible time and in any case not beyond a period of a week from the day it commences.

12. The defendant no.3, in case any witness is required to be examined, shall ensure that the affidavit in this regard be filed within a week thereafter with an advance copy to the plaintiff whose evidence shall be completed by the end of first week of July, 2023.

13. Since, this is a suit under Section 6 of the Specific Reliefs Act, the trial Court shall make an endeavor to decide the same by the end of July, 2023 and in any case by 15-08-2023.

JUDGE