

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

WRIT PETITION NO. 6761/2018

SHRI. VINOD S/O SHRIRAMJI AASTONKAR
VS

SHRI. MITHULAL S/O DHANSING NAND (DEAD) AND OTHERS

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

Court's or Judge's Order

Mr. Sawan Alaspurkar, Advocate for the petitioner

CORAM : A. S. KILOR, J.

DATED : 06/06/2023

Heard.

2. In this writ petition the order dated 13.04.2015 passed below Exh. 104 rejecting the application for issuance of witness summons and permission to lead evidence, is under challenge.

3. The petitioner is original plaintiff who filed a suit for specific performance of contract and in the said suit after recording the evidence of the defendant no. 2 on 29.06.2017, the application Exh. 104 was filed on 09.04.2018 for issuance of witness summons and permission to lead evidence. The ground on which the said application was moved was that the plaintiff came

across some documents and in the light of those documents, it is necessary to lead evidence. The said application came to be rejected by the impugned order dated 13.04.2018. The said impugned order reads thus:

“ORDER BELOW EXH. 104

“Say not filed. Hence proceed without say. Matter is fixed for final argument. Hence rejected because it seem that in order to prolong this application is filed.”

4. After going through the order, it leaves no doubt that the learned trial Court has not recorded any reason for rejection of the application on merit. It is further evident that the reasons stated in the application for moving such application were also not considered by the learned trial Court.

5. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned trial Court. Accordingly, I pass the following order:

(a) The writ petition is partly allowed.

(b) Order below Exh. 104 dated 13.04.2018 is quashed and set aside.

(c) The matter is remanded back to the learned trial Court to decide the application Exh. 104 afresh after hearing both the parties, in accordance with law.

(d) The learned Counsel for the petitioner undertakes to co-operate the learned trial Court to decide the application at the earliest.

JUDGE