

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

WRIT PETITION NO. 6229 OF 2019

Ramgopal Bhawandasji Shingare __ Vs. __ Mohd Yakub Mohmad Shaikh Ismail thr
L.Rs and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.K.Paliwal, Advocate petitioner
Mr. S.S.Alaspurkar, Advocate for Respondent No.8.

CORAM : AVINASH G. GHAROTE, J.
DATE : 10/01/2023

1] The petition challenges the order dated 19.7.2019 passed below Exh. 22 (pg. 75) whereby the application under Order 41 Rule 27 of CPC as filed by the Respondent (appellant in RCA No. 284/2012) has been partly allowed by permitting the production of document and so also order below Exh 25 dated 19.7.2019, whereby the application for production of additional evidence in appeal has also been allowed (pg.77).

2] Mr. Paliwal, learned counsel for the petitioner states that the impugned order is flawed inasmuch as there was no necessity whatsoever for the learned Appellate Court to have permitted production of the document, as the documents purported to be notices issued by the father of the Respondent to the father of the Petitioner, evidencing the position that there was a relationship of landlord and tenant between the father of the Petitioner and the father of the Respondent.

According to him, this position was already on record, in view of the reply at Exh.24 in appeal (para 3 pg. 62) in view of which admission, there was neither any necessity for production of document or for leading any evidence and whatever submissions the Respondent wanted to make, could have been made on the basis of the admitted position in Exh. 24.

3] Mr. Alaspurkar, learned counsel for respondent No.8 submits that the purpose of placing the document on record was to establish the relationship of landlord and tenant between father of Respondent and father of Petitioner and thereby raise a plea that the petitioner was not put in possession under the agreement and therefore, having indulged into raising an incorrect and false plea was not entitled for the discretion to be exercised in his faovur.

4] The averments in para 3 of Exh. 24 (pg.62) by the petitioner herein clearly indicate the undisputed position that the father of the present petitioner viz. Bhagwandas Shingre was the tenant in the suit premises and was in possession of the suit premises. This position therefore is already on record, admitted by the present petitioner, therefore, no additional purpose could have been served by production of document and permitting to lead evidence, as that would merely delay the decision of the appeal and nothing else. In view of the admission,

it is always permissible for the respondent to raise and canvass the above plea raised, in view of which the impugned orders are hereby quashed and set aside and the application below Exh. 22 and one below Exh.25 stands dismissed.

5] Needless to mention that it would be permissible for the respondent to raise and canvass the above plea based upon the admission of the petitioner as contained in para 3 of Exh.24 (pg.62).

6] The petition is disposed of in above terms.
No costs.

JUDGE

Rvjalit