

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

WRIT PETITION NO.5940 OF 2018

(SUSHILKUMAR SHANKARLAL KALOYA...VS.. SHARAD SAMAGRA GRAMIN VIKAS SHANSTHA & ANR.)

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

Court's or Judge's orders

Shri Abhijeet R. Deshpande, Advocate for Petitioner.
Shri M.M.Agnihotri, Advocate for Respondent No.1.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 22, 2023.

1. Heard.
2. The order, dated 08/02/2018, passed below Exh.233 by J.M.F.C. Court No.2, Wardha allowing the application under Order 1 Rule 10 of the Code of Civil Procedure and thereby permitting the plaintiff to add Chintamani Sharirik Shikshan Mahavidyalaya as party plaintiff No.2, is the subject matter of the present writ petition.
3. Admittedly, the suit is for recovery of the amount and it is alleged that though the defendant/petitioner collected the amount of fees he did not pay it to the plaintiff. The period of alleged transaction is between the years 2005 and 2007 and the suit was filed in the month of July 2008.

4. Undisputedly, the application under Order 1 Rule 10(2) of the Code of Civil Procedure, was filed on 08/11/2017 for addition of the plaintiff. The said application came to be allowed. After going through the impugned order, though the Court has observed that under Order 1 Rule 10 of the Code of Civil Procedure, the Court may at any stage of the suit, if satisfied that the suit has been instituted in the name of a wrong person, or the plaintiff through *bona fide* mistake and it is necessary for the determination of the real matter in dispute so to do, order any other person to be added as plaintiff on such terms as the Court thinks fit. However, there is no consideration as regards the limitation and the effect of joining the college as plaintiff No.2 in a suit for recovery of the amount. As there is no observation as regards the limitation and the effect of such addition of the plaintiff in a suit for recovery of the amount, I am of the opinion that the matter needs to be remanded back to the learned trial Court for fresh decision. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 08/02/2018 passed below Exh.233 by the trial Court is hereby quashed and set aside.

- iii) The matter is remanded back to the trial Court for fresh consideration.
- iv) The trial Court shall decide the same as expeditiously as possible.
- v) All the points are kept open.

The writ petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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