

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

WRIT PETITION NO.6845 OF 2018

(Kanhaiyyalal s/o Sumramalji Kalra and another Vs. Pradeep Singh s/o Sundarlal Chouhan and others)

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

Court's or Judge's orders.

Mr. P. A. Abhyankar, Advocate for Petitioners.
Mr. P. K. Mishra, Advocate for Respondent No.1.
Mr. A. Shelat, Advocate for Respondent Nos.6 & 7.

CORAM: ANIL S KILOR, J.

DATE: 28th AUGUST, 2023.

In a suit for specific performance filed by the petitioners along with the respondent Nos.6 and 7 against the respondent Nos.1 to 5 an application came to be filed by the respondent Nos.6 and 7 for abandonment of suit claim. The said applications came to be rejected and after rejection of the same the respondent Nos.6 and 7 they did not raise any grievance about such rejection and the said order remained unchallenged.

2. Thereafter, the petitioner moved an application Exh.82 for deleting the plaintiff Nos.1 and 4 under Order VI Rule 17 read with Order I Rule 10 of the Code of Civil Procedure (CPC) on the ground that the respondent Nos.6 and 7 filed the application Exh.69 and 71 without notice to the petitioners and they have admitted recession of contract and abandonment of the suit claim to the property and

thereby they turned hostile to the petitioners.

3. The said application Exh.82 was decided by the learned Trial Court vide order dated 26.06.2018, rejecting the same. The same is the subject matter of the present writ petition.

4. Mr. Abhyankar, the learned counsel for the petitioner submits that the application was simplicitor rejected on the ground that the earlier application moved by the respondent Nos.6 and 7 i.e. Exh.69 and 71 respectively came to be rejected for abandonment of their claim. It is pointed out that as the respondent Nos.6 and 7 became hostile and despite the said reason objection was raised to discard the evidence led by the respondent Nos. 6 and 7, it was not considered by the learned Trial Court. Therefore, though on earlier occasion vide common order below Exh.69 and 71 the application moved by the respondent Nos.6 and 7, was rejected, the learned Trial Court ought to have considered the application Exh.82 independently considering the prejudice which the petitioners would cause.

5. In the light of submission of the learned counsel for the petitioner, I have perused the record and the impugned order.

6. After going through the application it is apparent that the argument which is made before this Court has not

been pleaded and explanation is that, these are the subsequent events.

7. However, in light of the subsequent events the order cannot be termed as illegal when no such pleadings were made or no such case was put up before the trial Court by the petitioners.

8. In the circumstances, the rejection of application Exh.82 on the ground that earlier similar request on behalf of the respondent Nos.6 and 7 was rejected is just and proper and needs no interference.

9. Accordingly, the writ petition is dismissed.

10. However, liberty is granted to the petitioners to raise objection as regards the evidence led by the respondent Nos.6 and 7 by filing appropriate application if permissible under the law and if they so desire.

(ANIL S. KILOR, J.)