



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

WRIT PETITION NO.2290 OF 2024

Sau. Asha @ Rekha Bandu Kamdi and another .Vs. Jivan S/o Maroti Butale and others

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

Court's or Judge's Order

Ms Kirti Satpute, Advocate for petitioners.

CORAM : ANIL S. KILOR, J.

DATED : 12/04/2024

1. An application for taking legal representative of plaintiff No.1 -A on record vide Rule 3 of Order XXII of the Code of Civil Procedure came to be rejected vide order below Exh.159 dated 29.09.2023 passed by the Civil Judge Junior Division, Rajura, Dist. Chandrapur. The rejection was on the ground that missing report was not filed on record.

2. Thus, the petitioners after receiving the copy of missing report, filed review application at Exh.168 which came to be rejected vide Order Below Exh.168 dated 01.02.2024. Hence, the Order Below Exh.159 and order below Exh.168, are challenge in this writ petition.

3. It is the case of the petitioners that, the plaintiff No.1 -A is missing since 21.08.2014. It is submitted that, an offence was registered against the plaintiff No.1-A in Hudkeshwar Police Station, Nagpur under Section 302 and

307 of the Indian Penal Code on 26.03.2012 and on completion of investigation, chargesheet was filed. Plaintiff No.1-A was convicted on 16.09.2013 in Sessions Trial Case No.0396 of 2012. Thereafter, the plaintiff No.1-A released on parole on 21.08.2014 and since then, he is missing.

4. The learned Trial Court while rejecting the application for review on the ground that presumption cannot be drawn of Civil Death under Section 107 of the Indian Evidence Act, 1872 in the peculiar facts of the present case. It is observed that, since the plaintiff No.1-A has been convicted for the offences punishable under Sections 302 and 307 of the IPC and when he was released on parole, he is missing. Therefore, there is a possibility that plaintiff No.1-A is avoiding the arrest.

5. After going through the reasons recorded, I am of the opinion that, no error has been committed by the learned trial Court in rejecting both the applications. Accordingly, I do not find any merit in the present writ petition. Hence it is dismissed.

6. Moreover, since the legal representatives have not approached to this Court challenging both the orders, the petition is not maintainable accordingly, on this count also, it is rejected.

JUDGE