



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

WRIT PETITION NO. 2760 OF 2024

(SMT. SUMATI @ ASHA LATE ANIL SUBHEDAR & OTH..VS.. YASHODHARA LATE SUNIL
SUBHEDAR & OTH.)

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

Court's or Judge's orders

Shri Abhijit Deshpande, Adv. a/w Shri N.R.Bhishikar, Adv. for Petitioners.
Shri S.P. Dharmadhikari, Sr. Adv. a/b. Shri A.A.Sambaray, Adv. for Resp. 1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 25, 2024.

1. Heard.
2. The Respondent /Decree Holder moved an application Exh.12 for appointment of Court Commissioner for demarcating the share in the suit property of each party. The Petitioners/ Judgment Debtors did not file their say to the said application. The learned trial Court, thereupon, allowed the application and appointed a Court Commissioner.
3. Thereafter, the Petitioners/ Judgment Debtors filed an application Exh.26 for review on the ground that they were not granted sufficient opportunity of being heard. The said application Exh.26 came to be rejected vide order dated 03/04/2024. As such, the order dated 05/02/2024 allowing the application for appointment of Court Commissioner and order dated 03/04/2024, rejecting the application for review, are the subject matter of this petition.

4. From the record, it is evident that the petitioners were not granted opportunity of being heard before deciding the application Exh.12. Moreover, the learned Senior Advocate Shri Dharmadhikari has no objection if such opportunity is granted to the petitioners by making it time bound.

5. In the circumstances, I am of the opinion that the petitioners be given one opportunity to put their case before the Executing Court as regards the application Exh.12.

6. In that view of the matter, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 03/04/2024 passed below Exh.26 and the order dated 05/02/2024 passed below Exh.12 by the 4th Joint Civil Judge Senior Division, Nagpur in F.D. No. 33 of 2019 are hereby quashed and set aside.
- iii) The matter is remanded back to the Executing Court to decide the application Exh.12 afresh, after granting opportunity of hearing to the petitioners.

- iv) The parties shall appear before the Executing Court on 29/04/2024 at 11:30 a.m.
- v) It is clarified that if the petitioners file their say to application Exh.12 on 29/04/2024 the same may be accepted and thereafter the learned Executing Court may hear and decide the matter within 15 days.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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