



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

WRIT PETITION NO.1757/2025

Khushal Mukharu Sapate .Vs. Ashok Gajanan Motghare and anr.

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

Court's or Judge's orders

Mr. A. M. Chandekar, Advocate for petitioner.
Mr. R. R. Vyas, Advocate for respondent No.2.

CORAM : **ANIL L. PANSARE, J.**
DATE : **JULY 14, 2025**

On 01.04.2025 following order was passed.

"Heard.

2] The petitioner – original plaintiff no.1 and his brother filed suit against respondent no.1 – original defendant for removal of encroachment. Respondent no.2 – original plaintiff no.2 moved an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (for short "the Code") to transpose the petitioner as defendant no.2. The trial Court was pleased to allow the application vide impugned order dated 17/2/2025 passed in Regular Civil Suit No. 1/2012.

3] The learned Counsel for the petitioner submits that the application filed by respondent no.2 has been signed by the petitioner's son without there being any authority given by respondent no.2. He further submits that even if the order impugned is said to be legal and valid, the trial Court ought to have given opportunity to the petitioner to file written statement in terms of Order I Rule 10(4) of the Code, instead, the trial Court fixed the matter for recording evidence.

4] Issue notice to the respondents returnable on 29/4/2025.

5] In the meantime, there shall be stay to the proceedings, viz., Regular Civil Suit No. 1/2012 pending before the trial Court."

2. As could be seen, petitioner's case was that the application filed by respondent No.2 was not signed by him but was signed by petitioner's son. The second and most important ground to challenge

the impugned order is that the Trial Court did not offer the petitioner an opportunity to file written statement in terms of order I Rule 10(4) of the Civil Procedure Code, 1908.

3. Counsel for the petitioner submits that he will not press for order as regards authority of petitioner's son to sign on behalf of respondent No.2 and is restricting his argument to the second ground.

4. The counsel for the respondent No.2, though made an attempt to justify the order, he would fairly submit that the petitioner ought to have been given an opportunity to file written statement.

5. That being so, the order impugned dated 17.02.2025 passed by Civil Judge Junior Division, Armori in Regular Civil Suit No.1/2012, below Exh.-174, is quashed and set aside. The petitioner is entitled to file written statement and shall file the same by 31.07.2025. the Trial Court shall, thereafter, proceed with the suit, in accordance with law.

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

(Anil L. Pansare, J.)