



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

WRIT PETITION NO. 738 OF 2025
ASHWIN RASIKLAL DAWDA AND OTHERS
VERSUS
GAJANAN S/o KISANRAO BADKE AND OTHERS

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

Court's or Judge's Order

Mr. Madhur Deo, Advocate for the petitioners.
Mr. S. G. Malode, Advocate for respondent nos.1 and 2
Mr. Shaad Mirza, Advocate for respondent nos.3 and 4
Ms. D. V. Sapkal, A.G.P. for respondent nos.5 and 6

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 24, 2025.

1. Heard.

2. On 12.02.2025, following order was passed :

“Heard.

2. Contention is that the Court has, without giving opportunity of hearing to the petitioners – defendant nos. 5 to 17 and also without assigning any reason, allowed the application filed by respondent nos.1 and 2- original plaintiff, seeking leave to file suit under Section 91 as also exemption from issuing notice under Section 80 of the Civil Procedure Code, 1908.

2. Issue notice before admission to the respondents, returnable in the week commencing from 03.03.2025.

3. Learned A.G.P. waives service of notice for respondent nos.5 and 6.

4. In addition to usual mode of service, the petitioners may serve the respondents through all permissible modes, including service by the speed post and shall file affidavit of service.”

3. As could be seen, the trial Court has allowed the applications, filed by respondent nos.1 and 2 – original

plaintiffs seeking leave to file civil suit under Section 91 as also exemption from issuing notice under Section 80 of the Civil Procedure Code, 1908, without assigning any reason. The order reads “allowed”. Thus, the applications so filed have been allowed in one word. That apart, the petitioners/defendants were not given an opportunity of hearing. The orders impugned, therefore, will not stand to the scrutiny of law and the same are liable to be quashed and set aside.

4. Accordingly, the Writ Petition is partly allowed.

5. Both the orders dated 15.11.2024, passed by the learned Joint Civil Judge, Senior Division, Yavatmal on the applications filed under Section 80 and Section 91 of the Code of Civil Procedure, 1908, in Regular Civil Suit No. 171/2024, are quashed and set aside.

6. Both the civil applications are restored on the file of Joint Civil Judge, Senior Division, Yavatmal for deciding afresh in accordance with law and what has been stated in the body of this order.

7. The parties shall appear before the Court of Joint Civil Judge, Senior Division, Yavatmal on the scheduled date i.e. 16.04.2025.

8. The writ petition stands disposed of in the aforesaid terms. No order as to costs.

(ANIL L. PANSARE, J.)