



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

WRIT PETITION NO.2337 OF 2025

GOPAL S/O BALJNATH AGRAWAL
VERSUS
KISHOR S/O BALJNATH AGRAWAL, (DEAD) AND OTHERS

*Office Notes, Office Memoranda of
Coram, Appearances, Court's
orders or directions and Registrar's
orders*

Court's or Judge's orders

Mr. S.S. Shingane, Advocate for Petitioner.
Mr. P.R. Agrawal, Advocate for Respondents Nos.3 & 5.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 27th JANUARY 2026

PER COURT :-

1. Heard learned Advocate for the petitioner as well as learned Advocate for the respondents.

2. This petition takes exception to the order dated 02.04.2025, passed by Civil Judge Senior Division, Amravati, in Special Civil Suit No.11 of 2017, at Exhibit 170, rejecting the application filed by the petitioner/plaintiff, for discarding the evidence of defendants' witness viz. Mr. Radheshyam Agrawal.

3. Learned Advocate for the petitioner submits that the defendants have filed evidence on affidavit on behalf of witness by

name Radheshyam Agrawal, with respect to certain aspects, about which there are no pleadings in the written statement. Therefore, an attempt is made by the defendants to lead evidence beyond the pleadings and hence, an application was filed *vide* Exhibit 170, for discarding the evidence of said witness. He submits that, by the statements in the evidence on affidavit, a new story is sought to be introduced on behalf of the defendants and hence, the evidence is required to be discarded.

4. Learned Advocate for the respondents opposes the petition and submits that the application for discarding the evidence is not supported by any provisions of law and the trial court has rightly rejected the application by a well reasoned order. He submits that there are sufficient pleadings with respect to the contents in the evidence on affidavit of the said witness and as such, there is no question for discarding the evidence.

5. A perusal of the impugned order shows that the trial court has rejected the application by categorically observing that the evidence of the witness beyond the pleadings cannot be looked into and on that ground, it will not be legal and proper to discard the evidence. By referring to the legal position, the trial court has passed the impugned order and has rejected the application. A perusal of the

impugned order shows that there is no perversity with the view expressed by the trial court and the same is in tune with the position of law

6. It has to be noted that the evidence of a witness beyond the pleadings will not be considered to be admissible at the time of appreciation of evidence at the appropriate stage of suit. In view of this, no interference is warranted with the impugned order. Hence, the writ petition is dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

asd