



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1782 OF 2024

Tejal Display Systems,
Prop. Sharad Bapurao Yeole,
Age – 60 Years, Occu. Business,
r/o. Samarth Park, Sane Guruji Nagar,
Chalisgaon, Tq. and Dist. Jalgaon

..Petitioner

Vs.

Zilla Parishad, Jalgaon,
Through Chief Executive Officer,
Zilla Parishad Office,
Near Patrya Maroti,
Baliram Peth, Jalgaon
and others

..Respondents

Mr.M.M.Bhokarikar, Advocate for petitioner
Mr.R.H.Mewara, Advocate for respondent no.1

CORAM : AJIT B. KADETHANKAR, J.
DATE : AUGUST 29, 2026

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard for final disposal by the consent of learned advocate for the parties.

2. Notably, a composite prayer challenging three different orders passed by the trial court on three independent applications are under challenge by a single Writ Petition. The petitioner instituted Special Civil Suit No.204 of 2012 against the present respondents for the following substantive reliefs:-

B. The defendants may be ordered to jointly and severally repay an amount of Rs. 30,45,992/- to the plaintiff and the same may be recovered from the defendants.

C. The defendants may be ordered to jointly and severally repay the interest @24% p.a. on Rs. 20,03,600/- from dt. 31/03/2012 till the entire amount is repaid by defendants to the plaintiff.

D. The exemplary cost of Rs. 50,000/- of this suit may be saddled on defendants.

3. In the said suit, the defendants appeared and filed their written statements. The issues were framed.

4. On the basis of the pleadings and arguments, I now deal on the merits of the Writ Petition.

5. The record shows that after the matter was fixed for evidence, the evidence was opened. The plaintiff filed one application Exh.172 thereby seeking issuance of witness summons to one Dr.Rajesh Jain, Dr. Pramod Pandhare and Suresh Nile. The application was opposed by the defendants. However, for the reasons recorded the trial court allowed the application vide order dated 03.01.2023 and issued witnesses summons to said witnesses.

6. Subsequently, on 18.08.2023 another application Exh.187 came to be filed by the plaintiff seeking witness summons to one Somnath Rathi and another witness Mr.Rohan Mundada. The reason for issuance of the witnesses summons to these persons was stated that they were vendors of the petitioner/plaintiff from whom the plaintiff had purchased acrylic board and box. The said application was opposed by the defendants. Upon hearing both the parties, the trial court vide order dated 18.08.2023 rejected the said application. The trial court at paragraph 6 of the order observed that there were no pleadings in the plaint that the plaintiff has allegedly purchased the acrylic board and box from the said persons to whom witness summons was sought to be served. It was observed that it was an unnecessary exercise to issue witness summons to those persons. This is the first order impugned in the present Writ Petition.

7. Subsequently, another application Exh.189 came to be filed on 08.09.2023 thereby requesting to issue witness summons to one Anil Choudhari, Proprietor of Deva Arts. To justify the prayer it was stated that the plaintiff has got acrylic panel/board painted/printed by radium from the said witness. Hence, the plaintiff contended that it would be desirable to have the said witnesses during the evidence for proving the case. The said application was

dealt with by the trial court on its own merit. Vide the order dated 29.09.2023 the trial court rejected this application also with costs. The trial court observed that beyond the pleadings a plaintiff cannot lead such evidence which is not covered by the pleadings. It is observed that this evidence was also irrelevant for proving the prayers in the plaint. This is the second order impugned in the present petition.

8. Thereafter, another application Exh.192 came to be filed by the plaintiffs seeking witness summons to the Manager, Bank of India, Hirapur Road Branch, Chalisgaon and Manager, Axis Bank, Chalisgaon. The text of the application shows that the plaintiff wanted to prove that certain cheques were issued by the defendants to the plaintiff towards the work allotted and has accordingly advanced some consideration amount also. This application was also opposed by the defendants. The trial court while deciding this application observed that there were no pleadings in the plaint that cheques were advanced by the defendants to the plaintiff towards consideration/part consideration of the contract. Hence, for want of pleadings the trial court opined that the plaintiff cannot be allowed to call the said witnesses for this purpose. With this finding, the third application Exh.192 came to be rejected by the trial court on

02.12.2023. This is the third order impugned by the petitioner in the present Writ Petition.

9. Heard Mr.Bhokarikar, learned advocate for the petitioner and Mr.Mewara, learned advocate for the respondents.

10. Mr.Bhokarikar, learned advocate for the petitioner submitted that the entire endeavor of the plaintiff was to prove his case. He would submit that the plaintiff has every right to introduce such evidence which is in support of his plaint and hence trial court ought to have allowed all the three applications. He would further submit that merely for want of pleadings, a party must not be precluded from producing the evidence in support of his case. He submits that what is pleaded is the fact and not the evidence and hence, the plaintiff is absolutely justified in seeking witness summons to those witnesses.

11. Mr.Mewara, learned advocate for the respondents would support the findings rendered by the trial court. He would submit that there is no error in the observations recorded by the trial court and hence the Writ Petition may be dismissed.

12. Considered the submissions advanced by learned advocate for the parties. Firstly, this court has strong reservations

for impugning three different orders passed by the trial court at three different occasions on independent applications in a common Writ Petition. On this count itself the Writ Petition is liable to be dismissed with costs. However, considering that the Writ Petition is filed in 2024 and this court has issued notice granting stay to the suit proceedings, I now proceed to deal with each order impugned in this present Writ Petition.

13. So far as the order dated 18.08.2023 passed on application below Exh.187 is concerned, what is seen that the petitioner wants to call such witnesses who are his vendors from whom he has purchased acrylic board and box. The civil suit is in respect of a contract between the plaintiff and the defendants. The witnesses to whom witness summons are sought are not at all concerned with the contract between the plaintiff and the defendants. The plaintiff has to prove his case to the extent of his pleadings that he supplied certain material to the defendants and the defendants failed to pay the consideration against such supply. In view of this, there is absolutely no necessity to issue witness summons to the persons indicated in the application below Exh.187. I am not fully agreed with the findings recorded by the trial court for rejection of the application. However, for the reasons recorded

above, I find that those witnesses have least relevance with the trial between the plaintiff and the defendants. Hence, there is no reason to interfere with the order passed by the trial court on application below Exh.187.

14. Now, coming to the application below Exh.189, it also resembles with application below Exh.187. The plaintiff/petitioner referred to one Anil Choudhari, Proprietor of Deva Arts from whom he got acrylic board and box painted/transcribed with radium art. The plaintiff/petitioner sought issuance of witness summons to Shri.Anil Choudhari to prove his case. As observed above, the findings which I have rendered in respect of the order on application below Exh.187, are applicable to the application below Exh.189 also. This witness is also irrelevant for the purpose of proving the plaintiff's civil rights against the defendants. The said witness - Anil Choudhari was neither a party to the contract between the plaintiff and defendant nor such case is put up by the petitioner/plaintiff before me. In view of this, I find that issuance of witness summons to Anil Choudhari is not at all warranted. Hence, in my opinion, no interference is called for in the order dated 29.09.2023 passed by the trial court on application below Exh.189.

15. Now, as regards the third application Exh.192, it is seen that by virtue of this application witness summons are sought to be issued to two bank officials to prove that the defendants had issued two cheques in the name of the plaintiff. It is sought to be explained that since the defendants have refused any sort of relation with the plaintiff and any transaction, it was necessary to call for those witnesses in the witness box to prove that the defendants have issued cheques to the plaintiff. Said application was also opposed by the defendants. The trial court observed that the factum of issuance of cheque is not pleaded in the plaint and hence the plaintiff would not adduce such evidence which was not pleaded.

16. The argument of Mr.Bhokarikar, learned advocate for the petitioner/plaintiff is convincing to some extent. The evidence need not be pleaded. What is needed to be pleaded are the facts. I have reservations about the findings recorded by the trial court as to if issuance of cheques was not pleaded in the plaint only on that count the witness summons could not have been issued to those witnesses. However, the trial court has rightly observed that the factum of payment of some consideration/part consideration by the defendants to the plaintiff could be very well brought on record by producing the bank's statements and proceeding further in evidence

on that basis. This fact cannot be overlooked that the defendants have candidly denied that they had placed any order for supplying acrylic board and box to the plaintiff and that they had made any payment to the plaintiff to that regard. However, the mode to prove this fact as observed by the trial court is still at the hands of the plaintiff. For that purpose, the petitioner/plaintiff was not justified in praying for issuance of witness summons to the Bank Managers referred in the application. In view of this, I do not find that the third order also calls for interference of this court under Article 227 of the Constitution of India.

17. It is pertinent to note that the first application for issuance of witness summons was filed at Exh.172 which was allowed. The petitioner could have sought witness summons to all such witnesses whom he deemed necessary to call before the court. However, intermittently applications are filed one after another whereby the suit is delayed. This conduct is highly deprecable.

18. Resultantly, the petition fails. The petition is pending since 2024 and the petitioner has got his own suit stayed. For the reasons recorded above particularly about the petitioner's conduct, I deem it appropriate that the petition is liable to be dismissed with costs.

19. Hence, the Writ Petition is dismissed with costs of Rs.15,000/- (Rupees Fifteen Thousand). Costs be deposited in the trial court within a period of four weeks from today. Rule is discharged.

[AJIT B. KADETHANKAR, J.]

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KBP