

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9493 OF 2025

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Rajesh Vinodhchand Shah ... Petitioner
R/at Plot No.8, City Survey No. 6487, Shinganapore
Road, Phaltan, Tal. Phaltan, Dist. Satara.

Vs.

1. Anil Ravaji Shah
2. Chandrakanta Anil Shah
3. Sachin Anil Shah
4. Prachin Alias Sandesh Anil Shah
5. Madhuri Anil Shah
6. Anjali Anil Shah
7. Mayuri Anil Shah
8. Pramila Baahubali Mehta
9. Vaibhav Subhash Chandra Gandhi
10. Srishti Sandesh Vaara
11. State Bank of India
12. Bank of Maharashtra
13. Satara District Central Co-op. Bank Ltd.
14. Phaltan Urban Co-op. Bank Ltd.
15. Shrimant Maloji Raje Sahakari Bank Ltd.
16. The Branch Manager, Satara District Central Co-
operative Bank Ltd.
17. The Branch Manager, Baramati Co-operative
Bank Ltd.

18. Branch Manager, Satara District Central Co-operative Bank Ltd.
19. Branch Manager, Jankalyan Nagari Co-operative Pathasanstha Ltd.
20. Branch Manager, IDBI Bank Ltd. Phaltan Branch
21. Branch Manager, IDBI Bank Ltd. Sakharwadi Branch. Phaltan
22. Branch Manager, Urban Co-operative Bank Ltd. Laxminagar, Phaltan
23. Branch Manager Urban Co-operative Bank Ltd. Ravivar Peth, Phaltan
24. Branch Manager, Primary Teacher Co-operative Bank Ltd.
25. Branch Manager, the Cosmos Co-op. Bank Ltd.
26. The Branch Manager, ICICI Securities Ltd.
27. Branch Manager, Axis Bank Ltd.
28. Branch Manager, Industrial Development Bank of India Ltd.
29. Sailaja Vinodchandra Shah
30. Lalitang Vinodchandra Shah.
31. Smita Swapnil Mehta

... Respondents

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Mr. Manoj Patil a/w Kausubh Rayrikar, Akash Murudkar, Shubham Dhenge for the Petitioner.

Mr. Dhananjay Rananaware a/w Samarth Chavan, Shubham Dhobale for Respondent No.1.

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CORAM : SHAILESH P BRAHME, J.

RESERVED ON : 6th OCTOBER, 2026.

PRONOUNCED ON : 9th OCTOBER, 2026.

P. C. :

. Heard both sides finally.

2. The petitioner is questioning order dated 21.04.2025 passed below Exh.1457 in Special Civil Suit No. 22 of 2005 refusing to discard the answers given to the suggestions and denials.

3. The petitioner is the original plaintiff, who is prosecuting Special Civil Suit No. 22 of 2005 for partition, declaration and possession involving various immovable properties. The suit is contested by the respondents. The issues were settled. The plaintiff led evidence of 3 witnesses who were cross-examined by the respondents.

4. After recording substantial cross-examination, it was agreed between the parties to file questionnaire for suggestions and denials. The suggestions and denials submitted by the respondents were answered by witnesses of the petitioner. The first witness of the respondents was cross-examined and the suggestions and denials in the written form were filed by petitioner which were answered by the witness. At that stage, application Exh.1457 was submitted by the petitioner to discard the written answers given to the suggestions and denials. It was contested

by the respondents. By impugned order it was rejected.

5. Learned counsel for the petitioner submits that the procedure adopted by the parties for soliciting answers to the suggestions and denials of the advisory has no legal sanctity. Such a procedure is not prescribed under the procedural law. Therefore, application Exh.1457 ought to have been allowed. It is further submitted that there can not be any estoppel against the statute. The suggestions and denials should have been part of cross-examination. It is submitted by the petitioner that the lawyer did not obtain any consent of the petitioner for adopting the procedure. It is submitted that petitioner is ready to offer his witnesses for the cross-examination for recording suggestions and denials.

6. *Per contra*, learned counsel appearing for the respondents would submit that considering the bulky record and lengthy cross-examination of the witnesses, it was mutually agreed to submit suggestions and denials in writing. The purport was to save the time. No prejudice is caused to the petitioner. It is further submitted that Presiding Officer has endorsed the answers. The approach of the petitioner is hyper technical. The application Exh.1457 is after thought and it was preferred to get rid of damaging answers given by the witnesses. It is further submitted that

suit is of 2005 and no interference is called for.

7. I have considered rival submissions of the parties. The old suit filed by the petitioner is still at the stage of recording of the evidence of the respondents. The petitioner examined 3 witnesses and the first witness of the respondent is in the witness box. It transpires from the record that the oral evidence is bulky. The affidavit in lieu of examination-in-chief of the respondent no.1 runs into 76 pages. Thereafter, further additional affidavit is filed. The witness is being cross-examined by the petitioner.

8. There is no dispute that the witnesses of the petitioner were cross-examined and thereafter recourse was taken by the parties for exchanging the questionnaires and the answers to suggestions and denials in the written form. The suggestions and denials of the petitioner were answered by the witnesses of the respondents on 17.12.2021. The procedure adopted by parties is not replacement to cross-examination but in addition to it. The answers of the respondent no.1 bears endorsement of the Presiding Officer. Similar course was followed when the plaintiff's witnesses were examined. The counsel for the petitioner is unable to point out violation of any provision of law.

9. The evidence is bulky. The procedure contemplated by Order XVIII

of the Civil Procedure Code has not been deviated as such. The cross-examination of the witnesses is already recorded and it is going to be recorded for the witnesses of the respondents. In order to save the time, parties have mutually evolved questions – answers format for recording suggestions and denials. This cannot be said to be substitution of due procedure of law in recording the evidence. The Presiding Officer has endorsed on the answers given by the witnesses in writing. Under the supervision of the Presiding Officer, the procedure is being followed. I do not find there is violation of Order XVIII Rule 4 of the CPC. I find no substance in the submissions of learned counsel Mr. Manoj Patil that procedure adopted by the parties lacks legal sanctity.

10. The petitioner has taken a plea that his advocate did not appraise him regarding written suggestions and denials and there was no consent. It is further informed that action has also been taken as against the lawyer. It is pertinent to note that application Exh.1457 is submitted on 01.04.2025 when answers are given by the respondent no.1 to the suggestions and denials. My attention is adverted to paragraph no.4 of the written answers given by the respondent no.1. I find substance in the grievance of the respondents that when couple of answers are found to be not suitable to the petitioner, endeavour has been made to file application to discard the procedure and the answers. The application is

after thought.

11. The questionnaire soliciting the answers to suggestions and denials was submitted under the signature of the lawyer of the petitioner. The presumption is that the lawyer is safeguarding the interest of his client. Therefore, the allegations of the petitioner that the lawyer was not authorized to undertake such a procedure is misconceived.

12. The counsel for the petitioner has relied on the judgment of Hon'ble Supreme Court in the case of **Hari Krishna Mandir Trust Versus State of Maharashtra & Ors.** (2020) 9 SCC 356 to buttress that there can be no estoppel against statute or the Constitution. The principles laid down by the Hon'ble Supreme Court cannot be disputed. But I have already recorded that there is no violation of any statutory provision. Hence, the judgment will be of no avail.

13. Further reliance is placed on the judgment of **Nazir Ahmad Versus The King-Emperor** (1936) 63 IA 372 to buttress that things must be done in the manner it is provided, to the exclusion of other methods of performance. The ratio cannot be made applicable to the present case because neither is there express provision in CPC nor prohibition for recording answers to questionnaire of denial and suggestions.

14. The petitioner has also relied on the judgment of Hon'ble Supreme Court in the matter of **Bachhaj Nahar Versus Nilima Mandal & Anr.** (2008) 17 SCC 491. I have gone through principles laid down in paragraph No.11. It is observed by Apex Court that High Court had committed violations of several fundamental rules of civil procedure which is enumerated in paragraph No. 10 of the said judgment. The facts are distinguishable. The judgment would not enure to the benefit of the petitioner.

15. The counsel for the respondent refers to judgment of the Hon'ble Supreme Court in the case of **Kailash Versus Nanhku & Ors.** (2005) 4 SCC 480 to press into service the ratio that the object of prescribing procedure is to advance the cause of justice. Following is the relevant extract:

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* are pertinent: (SCC p. 777, paras 5-6)

"The mortality of justice at the hands of law troubles a

judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable.... Justice is the goal of jurisprudence -- processual, as much as substantive."

In the present matter also, both parties have initially agreed for a particular procedure for recording suggestion and denials of the witnesses. It has substantiated the cause of justice.

16. Further reliance is placed on the judgment of the Hon'ble Supreme Court in the Case of **Shreenath & Anr. Versus Rajesh & Ors.** (1998) 4 SCC 543. The observations of para number 3 are pressed into service. It can be said that if the submissions of the petitioners are accepted and procedure adopted by the parties is held to be illegal by implication the cause of justice would be frustrated.

17. The learned Judge has recorded reasons for rejecting application by impugned order. It is clarified that the probative value of the oral evidence and the legality of the procedure can be appreciated during the course of final hearing. At interlocutory stage, such an application should not have been filed. It cannot be overlooked that suit of 2005 is still

pending for recording of evidence. No case is made out to cause any interference.

18. The Writ Petition is dismissed.

19. Special Civil Suit No. 22 of 2005 is expedited.

(SHAILESH P. BRAHME, J.)