

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

WRIT PETITION NO. 7273 OF 2014

Sunita w/o Manoj Goud,
Age: 30 years, Occ: Household,
R/o. Presently residing with her father,
Babulal Jugalkishor Saini,
Malhoba Nagar, Beside Dwarwati
Bhakti Niwas, Shirdi, Tq. Rahata,
Dist. Ahmednagar.

...Petitioner

versus

Manoj Sagarmal Goud,
Age: 33 years, Occ: Business
(Sai Hardware),
R/o. Eklavya Gas Godown,
Mukund Nagar, Mohadi, Behind
Power House, Opp. K.D. Company,
Mumbai Agra Road, Dhule,
Tq. & Dist. Dhule.

...Respondent

.....
Mr. Dhananjay Mane, Advocate h/f Mr. Milind Patil, Advocate for
petitioner
Mr. V.P. Latange, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 7th DECEMBER, 2015

ORAL ORDER :

It appears that the application Exhibit-64 came to be allowed by learned trial Court on 18/07/2014 in Hindu Marriage Petition No. 77 of 2013, wherein the petitioner prayed for issuance of witness summons to the Commissioner of Municipal Corporation, Dhule or to its official representing Corporation so as to produce on

record the details as regards 'Sai Hardware' located in Moradi area, Chalisgaon Chowki, near Amrapali Hotel. The details as were called, the name of shop owner and details of shop licence.

2. Pursuant to summons served on Corporation, the Assistant Commissioner submitted report that details as were called for, are not available on the record of Corporation. As a consequences, the Court passed order on 08/08/2014 below Exhibit-73 casting burden on the petitioner to produce the documents in question.

3. It is the case of petitioner that once the Court ordered witness summons, if really record is not available, witness must appear and depose as regards the same and not to give report, as according to him, what was issued was witness summons and not calling of report.

4. The said prayer is opposed by learned Counsel for the respondent. According to him, if the record is not available with the Corporation, no purpose will be served by summoning the witness.

5. Having considered the rival submissions, it is noted that once witness is summoned by the Court, the report that is submitted

before the Court would have been taken into account, if the witness appears before the Court and depose in support of report. The Court is not doing administrative act but doing judicial work, for which appropriate procedure prescribed under the Evidence Act is required to be followed and satisfy itself as regards non availability of record with the Corporation and thereafter, draw conclusion as to whether further order in the matter is necessary by putting the petitioner on notice or casting burden on petitioner to prove said matter could be passed.

6. In view of above, the order dated 08/08/2014, which is impugned herein, came to be passed below Exhibit-73, as such, is not sustainable. The writ petition stands allowed. The order impugned dated 08/08/2014 below Exhibit-73 is set aside. Learned trial Court is required to decide the issue afresh in the matter.

[N.W. SAMBRE, J.]