

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

WRIT PETITION NO. 11443 OF 2014

Balaji s/o Shesherao Patil
Age 33 years, Occu : Agriculture
R/o Thotwadi, Taluka Mukhed,
District Nanded

.. Petitioner
[Orig.Applicant]

Versus

Daiwshala w/o Balaji Patil
Age 29 years, Occu-Agri. &
Household, R/o Thotwadi
Taluka Mukhed, District Nanded
at present R/o. Rui, Taluka
Kandhar, District Nanded.

.. Respondent
[Orig.Non-applicant]

...

Shri K.M.Chandaliya, Advocate for petitioner
Shri N.B.Jadhav, Advocate for respondent.

...

**CORAM : SUNIL P. DESHMUKH, J.
DATED : 17TH APRIL, 2015**

ORAL JUDGMENT:-

1] Rule. Rule returnable forthwith. Heard learned counsel for the parties finally by consent.

2] It is not in dispute that the petitioner has submitted a list of witnesses at Exh.26 in the proceedings and that the first four

witnesses had already been examined and name of Mr.Dumne was also found in the list.

3] Since Mr.Dumne was the signatory to the compromise referred to, he was also sought to be examined by the petitioner.

4] As presence of Mr.Dumne could not be secured at the instance of the petitioner, he had applied for issuance of witness summons to said Mr.Dumne. No objection to the said application was given by respondent.

5] An order came to be passed on 24/11/2014 rejecting application purportedly for the reason to overcome lacunae in the evidence in the cross examination, the witnesses could not be allowed to be examined. This order perhaps has been passed oblivious of that his name already figured as a witness at Sr.No.5. On the face of it, particularly in view of the no objection given by respondents, the evidence of Mr.Dumne as sought by petitioner ought not to have been closed by rejecting application. The order thus is unsustainable and is set aside, however Exh.45 stands allowed.

6] In view of order on Exh.45 though the petitioner intended to continue with the evidence and had not filed any evidence close purshish, his evidence has been closed down under order dated 24/11/2014. This however, may have reference to earlier lapses on the account of petitioner having remained absent. This circumstance as such can be taken care of by making the petitioner pay costs of Rs.Five Thousand to the other side. Accordingly, order closing evidence of the petitioner also stands set aside. Costs of Rs.Five Thousand shall be a condition precedent. The cost to be deposited in

the trial Court within three weeks.

7] Accordingly Writ Petition stands allowed. Rule is made absolute in aforesaid terms.

(SUNIL P. DESHMUKH,J.)

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