

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6711 OF 2013**

1 Shri Vikas Shelke	)	
Age 31 years Occ Agriculture	)	
2 Shri Sujeet Hanmant Shelke	)	
Age 32 yrs. Occ: Agriculture	)	
3 Shri Hanmant Mahadeo Shelke	)	
Age 57 yrs Occ Agriculture	)	
all R/o Ujani Vasahat, Pandharpur,	)	
Dist Solapur	)	..Petitioners

Vs.

1 Shri Balasaheb Digambar Pawar	)	
Age 67 Yrs Occ Agriculture	)	
R/o Gursale Tal Pandharpur,	)	
Dist Solapur	)	
2 The Collector, Solapur	)	
Dist Solpaur	)	
3 The Tahsildar Pandharpur,	)	
Tahasil office, Pandharpur	)	..Respondents

Mr. V. S. Talkute for the Petitioners
None for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 16th SEPTEMBER, 2015

ORAL JUDGMENT

1 Rule. Considering the challenge raised in the above Petition, notice for final disposal was issued on 29-7-2013. However none appears for the Respondent No.1/Plaintiff though served.

2 The above Writ Petition is invoked against three orders two of which are dated 17-4-2013 passed on applications Exhibit 118 and 124 and the third order is the order dated 12-6-2013 passed on application Exhibit 127. All the said applications have been filed by the Petitioners / Defendant Nos.3 to 5. The Suit in question being Regular Civil Suit No.24 of 2006 has been filed by the Respondent No.1 herein for an injunction restraining the Respondent No.2 and 3 from providing road to the Petitioners i.e. the Defendant Nos.3 to 5 through the suit property by exercising powers under the Mamletdar Courts Act. It is the case of the Plaintiff that the Defendant Nos.3 to 5 i.e. the Petitioners herein have alternate road going through the percolation dam. Hence the controversy in the said Suit is as regards whether there exists any alternate road to the Defendant Nos.3 to 5 to access their property. It seems that the authorities vide letter dated 3-4-2008 of the officer Minor Irrigation Sub Division Pandharpur, has restrained the Defendant Nos.3 to 5 and all the villagers from using the said road going through the percolation dam on the ground that the same is likely to have an adverse effect on the percolation dam. The said letter dated 3-4-2008 is therefore vital to the defence of the Defendant Nos.3 to 5 in the Suit. The said letter have been produced by the Defendant Nos.3 to 5. The Defendant Nos.3 to 5 therefore filed an application Exhibit 117 for witness summons being issued to the signatory of the said letter dated 3-4-2008. The said application Exhibit 117 came to be allowed.

Thereafter the Petitioners filed an application Exhibit 118 for issuance of witness summons to the specific officer V. B. Birajdar, Junior Engineer, Minor Irrigation Sub-Division Akkalkot, to remain present for giving evidence. The said application Exhibit 118 was also allowed, however witness V. B. Birajdar was not present at the relevant time in the morning session and in view of the fact that the service report of the witness summons was not filed, the Trial Court passed an order on Exhibit 118 and disposed of the same.

3 It appears that the said witness V. B. Birajdar thereafter appeared in the afternoon session in the Trial Court and filed a report that the relevant papers relating to the said letter dated 3-4-2008 are in the office of the Minor Irrigation Project Zilla Parishad, Sub Division Pandharpur, and therefore requested for the said papers to be called for. The said application Exhibit 118 thereafter came to be filed. The Defendant Nos.3 to 5 thereafter filed application Exhibit 124 for issuance of witness summons to the office of the Minor Irrigation Project Zilla Parishad, Sub Division Pandharpur for production of the papers relating to the said letter dated 3-4-2008 along with the map and relevant documents. The said application Exhibit 124 was rejected by the Trial Court on the ground that on the earlier occasion the application Exhibit 118 was filed and therefore witness summons could not be issued. The petitioners thereafter filed the instant application Exhibit 127 for witness summons being issued to Balasaheb Waghmare, working in the Sub-Division Office Zilla

Parishad (Local) Sangola to remain present along with the papers pertaining to the letter dated 3-4-2008. The said application also came to be rejected by the Trial Court on the ground that the earlier applications were rejected and that the Defendants are trying to delay the adjudication of the Suit in question.

4 Heard the Learned Counsel for the Petitioners. As indicated above the letter dated 3-4-2008 is very material in the context of the defence raised by the Defendants as also in the context of the claim of the Plaintiff that the Defendant Nos.3 to 5 have an alternate road. It is required to be noted that the applications Exhibit 117 and 118 were allowed by the Trial Court and in fact the witness V. B. Birajdar though not present in the morning session had come to the Court albeit belatedly in the afternoon session. It is therefore not a case where the Defendants had not taken any steps to serve the witness summons on the concerned witness. The witness obviously could not have deposed at the said length of time without having a look at the papers and it is in the said content that the Defendant Nos.3 to 5 had sought production of the papers connected with the said letter dated 3-4-2008. In my view the Trial Court has erred in rejecting the applications Exhibit 124 and 127. The Trial Court ought to have given final opportunity to the Defendants to adduce evidence of the witness whose evidence according to the Defendants is vital to their defence. It is well settled that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. The

impugned orders dated 17-4-2013 and 12-6-2013 would accordingly stand quashed and set aside. However, since the application Exhibit 127 is last in point of time, the same would stand allowed. The Trial Court is directed to issue witness summons to the person from the office of the Sub-Division Zilla Parishad, Sangola to remain present in the Trial Court with the relevant papers relating to the letter dated 3-4-2008. The Defendants would complete the evidence of the said witness expeditiously and not later than two weeks of the witness remaining present in Court pursuant to the issuance of summons.

5 The Petition is allowed to the aforesaid extent. Rule is made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment