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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6853 OF 2014

Naresh Pandharinath Chaudhari
Age - 42 years, Occ - Agriculture, Business
R/o Manraj Park, Jalgaon,
Taluka and District - Jalgaon

PETITIONER

VERSUS

Laxman Vyankar Patil
Age - 83 years, Occ - Agriculture
R/o At and Post Avhane,
Taluka and District - Jalgaon

RESPONDENT

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Mr. Madhav M. Bhokrikar, Advocate for the petitioner
Mr. S. D. Bhosale h/f Mr. S. P. Brahme, Advocate for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.

2. On the either side there are various submissions on facts. Learned advocate for the petitioner refers to sections 30, 31 and 32 of the Civil Procedure Code and contends that in spite of issuing summons twice, the court has accepted request of the person who is vital witness as far as plaintiff's case is concerned,

without calling upon the petitioner and under the circumstances, his application at Exhibit-101 ought to have been properly appreciated and decided. Learned advocate further, in addition to aforesaid provisions of civil procedure code, refers quite a few citations namely "*Ramdeo Prasad V/s State*" reported in *AIR 1951 Allahabad 415*; "*Jagpat and others V/s State*" reported in *1957 Allahabd 764*; "*Bhupathiraju Suryanarayanaraju V/s Bantupalli Appanna and Another*" reported in *AIR 1959 AP 645* and "*Uchhabkanwar and Another V/s Legal Representatives of Ramswaroop and Others*" reported in *AIR 1995 Rajasthan 209*.

3. According to learned advocate for the petitioner, once the court makes up its mind to summon a witness, he should always be compelled to attend the court to give evidence, taking all measures, as contemplated under section 32 and further it is not the discretion of the court to take any one of the measures and may refuse to take further measures.

4. Learned advocate for the respondent, however, resists aforesaid request stating that once a person had been before the court and requested the court not to force upon him to give evidence and the request having been accepted, rejection of application Exhibit-101, may not be faulted with.

5. Learned advocate for the respondent further submits that “*no evidence*” order has been passed against the plaintiff and the matter has proceeded further and in the circumstances, no indulgence be given to the petitioner.

6. Perusal of the impugned order shows that aforesaid provisions as well as decisions being relied upon in the writ petition were not brought to the notice of the court nor the other side appears to have an opportunity to deal with the same. As such, in the interest of justice, application Exhibit-101 can be heard afresh by the trial court by giving opportunity to the parties concerned in respect of the application. For said purpose, the impugned order is set aside. In view of aforesaid, “*no evidence*” order also would stand set aside.

7. Writ petition accordingly stands allowed. Rule is made absolute in aforesaid terms. Civil application No.9913 of 2016 as such, stands disposed of.

[SUNIL P. DESHMUKH, J.]