

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

WRIT PETITION NO. 10151 OF 2012

Mudra Rajkumari D/o Prashant Agrawal
Age : Minor being Minor through her
next friend/guardian
Shri Prakash S/o Late Bhikchand Agrawal
Age 62 years, Occu-Business
R/o Old Bombay-Agra Road, Plot No.87
Dhule, Tq. & Dist.Dhule.

**.. PETITIONER
[ORIG.PLAINTIFF]**

VERSUS

- 1] The State of Maharashtra
(Copy to be served on G.P.
In the High Court of Judicature
of Bombay Bench at Aurangabad.
- 2] Shri N.R.Tayade
Age Years, Occu-Service as Tahsildar
R/o Tahsil Office, Dhule, Tq. & Dist.Dhule
- 3] Raghunath Gawade
Age Years, Occu-Service as District
Supply Officer, R/o Office of Collectorate
Dhule.
- 4] Shri N.S.Chaudhary
Age Years, Occu-Service as
Additional Collector,
R/o Office of Collectorate Dhule
Tq. & Dist.Dhule.
- 5] Shri U.V.Upasani
Age Years, Occu-Service as
Supply Inspector, Nagar Palika
Section, Collectorate Dhule
Tq. & Dist.Dhule.

- 6] Shri Manojkumar Suryawanshi
Age Years, Occu-Service
R/o Office of Collectorate, Dhule
Tq. & Dist.Dhule.
- 7] Manohar s/o Bhikchand Agrawal
Age 65 years, Occu-Business
R/o Old Bombay Agra Road, Plot No.87
Dhule, Tq. & Dist.Dhule. (Deleted from the Suit vide
order dated 21/08/2012)
...RESPONDENTS
(ORIG.DEFENDANTS)

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WITH
APPEAL FROM ORDER NO.136/2009 WITH
CIVIL APPLICATION NO.12285/2009

Mudra Rajkumari D/o Prashant Agrawal
Age : Minor being Minor through her
next friend/guardian
Shri Prakash S/o Late Bhikchand Agrawal
Age 62 years, Occu-Business
R/o Old Bombay-Agra Road, Plot No.87
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.. APPELLANT
[ORIG.PLAINTIFF]

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Dhule.

- 4] Shri N.S.Chaudhary
Age Years, Occu-Service as
Additional Collector,
R/o Office of Collectorate Dhule
Tq. & Dist.Dhule.
[Dismissed against R.4. As per
Courts order dt. 15/11/2011
- 5] Shri U.V.Upasani
Age Years, Occu-Service as
Supply Inspector, Nagar Palika
Section, Collectorate Dhule
Tq. & Dist.Dhule.
- 6] Shri Manojkumar Suryawanshi
Age Years, Occu-Service
R/o Office of Collectorate, Dhule
Tq. & Dist.Dhule.
[Dismissed against R.6
as per Court's order dt.24/1/2012.]
- 7] Manohar s/o Bhikchand Agrawal
Age 65 years, Occu-Business
R/o Old Bombay Agra Road, Plot No.87
Dhule, Tq. & Dist.Dhule.
- ...RESPONDENTS
(ORIG. DEFENDANTS)**

.....

Mr.C.R.Deshpande Adv. for petitioner
Mr.V.M.Kagne,AGP for respondent No.1&3 to 6
Mr.D.S.Bagul, Adv. for Respondents no.2

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CORAM : V. L. ACHLIYA, J.

DATED : 20TH APRIL, 2016

ORAL JUDGMENT :

Rule. Rule returnable forthwith. With consent of parties,
Petition as well as appeal are taken up for final disposal. Since the

writ petition and appeal are arising of order passed in same proceeding, same are heard together and decided by common order.

2] Petitioner has preferred Writ Petition No.10151/2012 challenging the order dated 1/12/2012 passed by Joint Civil Judge, Senior Division, Dhule in Special Suit No.147/1999, whereby the learned Judge allowed the application moved by defendant to produce certain documents. Whereas, the A.O. No.136/2009 is preferred against order dated 8/10/2009, passed in Special Suit No.147/1999, whereby the trial Court has refused to entertain the application seeking order to strike out the defence for non compliance of order dated 19/8/2008 to produce certain documents.

3] According to the learned counsel for the petitioner, the petitioner/plaintiff has already filed affidavit by way of examination in chief and the witness has been partly cross examined by defendant. In view of the production of the documents at belated stage, the plaintiff will have to consider as to whether any further evidence by way of examination in chief required to be adduced in the matter. Learned AGP appearing for the respondents submits that in such eventuality the plaintiff may seek leave of the Court to file additional affidavit by way of examination in chief and further cross examination can be recorded thereafter. In my view the option to seek permission to file additional affidavit by way of further examination in chief is very much available for the petitioner and there is no reason for the trial Court to refuse to entertain such request.

4] It appears from record that, the plaintiff has filed Suit for damages on account of cancellation of kerosene license. During the pendency of the Suit, the petitioner has moved an application seeking direction against the defendants to produce certain documents. As the documents were not produced the plaintiff moved application to strike out the defences of defendants. Against the rejection of application the petitioner has filed the appeal. At subsequent stage the defendant moved application to produce documents, to which the plaintiff objected on the ground of delay. As the application for production of documents is allowed, the petitioner has preferred this petition. In my view, no serious prejudice is caused to the petitioner on account of impugned orders as the case is still at the stage of recording of the evidence.

5] Having appreciated the submissions advanced, I am of the view that the order dated 1/12/2012 passed by the trial Court calls for no interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The trial Court has acted well within its power to entertain the application for the production of the documents. Although it is expected that the parties should file documents alongwith their pleadings or atleast before the settlement of the issues, but subsequent filing of the documents is not barred in law. In appropriate case the Court may allow such production at subsequent stage. In the process of dispensation of justice, the Courts are not expected to adhere to technicalities. The provisions of law dealing with procedural aspects always to be construed

liberally. Therefore, the impugned order dated 1/12/2012 cannot be said to be illegal or without jurisdiction. In fact the petitioner has earlier moved an application seeking production of certain documents. As the order to produce document was not complied, the petitioner has moved an application under Order 39 Rule 11 of Code of Civil Procedure to strike out the defences of the defendants. The Court has rejected the application and observed that in the facts and circumstances of the case, if required, adverse inference will be drawn for non production of document. Being aggrieved, by said order the petitioner has preferred Appeal No.136/2009 which is heard alongwith present Writ Petition. Therefore, the impugned order calls for no interference in exercise of jurisdiction under Article 227 of the Constitution of India.

6] So also the order dated 8/10/2009 passed by trial Court calls for no interference in exercise of appellate powers, as the exercise of powers under Order 39 Rule 11 of Code of Civil Procedure are discretionary in nature. The view taken by learned judge is possible view, in the matter and therefore same is not liable to be substituted in exercise of appellate powers by this Court. The impugned order is neither perverse nor without jurisdiction.

7] In view of this, the appeal as well as the writ petition filed against impugned orders are devoid of merit and substance therein and liable to be rejected. Accordingly, Writ Petition as well as Appeal are dismissed with no order as to costs. However, the trial Court is directed that in case the plaintiff seeks leave to file additional

affidavit by way of examination in chief then same may be taken into consideration to avoid any prejudice being caused to petitioner due to production of documents at belated stage. Interim relief stands vacated. Parties are directed to appear before the trial Court on 7/6/2016. On appearance of the parties, trial Court is directed to proceed with the matter and dispose of the case as expeditiously as possible. Parties are directed to cooperate with the trial Court in expeditious disposal of the Suit.

Rule discharged in above terms. In view of disposal of the appeal the Civil Application No. 12285/2009 stands disposed of.

(V.L.ACHLIYA,J.)

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