

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7000 OF 2013

Kumbhi Kasari Sahakari
Sakhar Karkhana Ltd. Kudtre .. Petitioner
vs.
The Managing Director
Food Corporation of India and ors. .. Respondents

Mr. Amit B. Borkar for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 08 JULY 2016.

P.C. :-

1] On 7 August 2013, this Court had issued notice for final disposal of the matter and in the meantime, granted stay on further proceedings of Special Civil Suit No. 57 of 2004.

2] Mr. Borkar, learned counsel for the petitioner, submits that service is completed upon the respondents. In view of the order dated 7 August 2013, this petition is disposed of finally, at the stage of admission.

3] The challenge in this petition is to the order dated 21 June 2013 made by the 3rd Joint Civil Judge, Senior Division, Kolhapur (Trial Judge). The impugned order was made upon an application

Exhibit-83/D seeking for re-issuance of witness summons. The impugned order reads thus:

*“Order
Some of the witness summons have already been duly served, the plaintiff has asked for re-summons, so the plaintiff to file fresh application.”*

4] If the application at Exhibit-83/D is perused, it is quite clear that by the said application, the petitioner had applied for re-issuance of witness summons. The reason for seeking such re-issuance has been duly stated in the application at Exhibit-83/D. Initially, the Trial Judge, had in fact, issued witness summons. However, since the summons were served upon the witnesses beyond the date fixed for deposition, the witnesses did not remain present as directed. In these circumstances, the petitioner (original plaintiff) applied for re-issuance of summons.

5] The impugned order is quite unsustainable. The application at Exhibit-83/D was in fact fresh application for re-issuance of summons. There was no reason to reject this application with a direction that the petitioner files yet another fresh application.

6] Accordingly, the impugned order dated 21 June 2013 is set aside. The Trial Judge is directed to issue fresh witness summons to the witnesses as requested in the application at Exhibit-83/D. The Trial Judge to ensure that the returnable date is at least six weeks, since the witnesses are stated to be outstation witnesses.

7] The petitioner is directed to produce an authenticated copy of this order before the Trial Judge on 25 July 2016.

8] The petition is disposed of in the aforesaid terms.

9] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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