

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 11261 OF 2012

Rameshbhai Purushottam Shah .. Petitioner
Vs.
Laxman Waman Kalate & ors. .. Respondents

Mr.S.C.Wakankar, for the Petitioner.
Mr.Harshad Sathe a/w Mr.S.C.Mangale, for Respondent No.6.

***CORAM : N.M.Jamdar, J.
Friday, 16 September 2016.***

P.C. :

By order dated 6 December 2012 notices have been issued to the Respondent. Notices have been served. The petition is taken up for disposal.

2. By the impugned orders passed on 21 August 2012 and 28 August 2012, the request of the Petitioner-Plaintiff to produce witness has been refused, the consequence of which is that the prayer of the Petitioner-Plaintiff to examine the witness in support of his case has been refused. The Petitioner-Plaintiff had earlier sought appointment of an advocate to compare the signatures and submit report. Since the advocate, inspite of directions, did not submit the report, the Petitioner-Plaintiff moved another application for examination of a handwriting expert. The learned Civil Judge

Senior Division Pune, before rejecting the Application for issuance of witness summons did not notice that by order dated 28 August 2012 liberty was granted to the Petitioner-Plaintiff to produce a witness. Normally for fair adjudication of trial, if a party wants to examine a witness in support of its case, the Court generally grants such prayer unless some grave prejudice is caused to the other side or prayer made is malafide. None of these exceptions exists in this case. The request made by the Petitioner-Plaintiff for issuance of witness summons was an innocuous request which ought not to have been rejected. In view of the interim order passed in this petition and the pendency of the petition, the suit filed by the Petitioner-Plaintiff has been stayed for last four years. Therefore, the request made by the learned counsel for Respondent for further adjournment cannot be granted. No prejudice is caused if a witness is examined by the Petitioner-Plaintiff as the Respondent will get an opportunity to cross-examine.

3. Accordingly, the Writ Petition is disposed of by quashing and setting aside the impugned orders dated 28 August 2012 and 31 August 2012 and the Applications below Exhibit 111 and 112 passed by the Civil Judge Junior Division Pune, in Civil Suit No.816 of 2005 are allowed. Registry to communicate the order to the learned Civil Judge, Pune forthwith so that the suit can be proceeded with.

(N.M.Jamdar, J.)