

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

WRIT PETITION NO. 980 OF 2014

M. Salim M.A. Karim Kalyani.	... Petitioner.
Versus	
M/s. Arati Company.	... Respondent.

Mr. J.M. Khairdi, advocate for petitioner.

Ms. Bhagyashri Mangale h/f. Kshitija G. Sarangi, advocate for respondent.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 21, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the sole defendant in Special Civil Suit No. 282 of 2002. The Petitioner herein had filed an

application on 28/10/2013 seeking the relief of issuance of Court summons to the officer of Bombay Merchantile Cooperative Bank Limited. The said application was rejected on the same day on the ground that the defendant had not filed witness list at proper time, and therefore, that the application was filed at the belated stage and therefore, the Court had refused to issue witness summons.

4 The Petitioner had then renewed his prayer seeking review of the said order by application dated 30/10/2013. The said application was rejected by an order dated 11/11/2013. It was observed by the court that it was incumbent upon the defendant to furnish list of witnesses at proper stage and that the earlier application was rejected and therefore, second application was held to be not tenable in the eyes of law.

5 The learned Counsel for the Petitioner submits that in fact, the Petitioner in order to defend his suit had prayed that the petitioner could not have called the bank officer as his witness and it would be

futile to enlist him in the list of witnesses. It is in these circumstances that the Petitioner had prayed for issuing summons to the bank officer.

6 The learned Counsel for the respondent has vehemently submitted that the Special Civil Suit is instituted in the year 2002 and after more than 10 years an application was being made for issuing witness summons and therefore, the Court has rightly rejected the application.

7 Upon perusal of the petition and Exh. 5 to the petition, this Court is of the opinion that the petitioner deserves a right to defend the suit and it is rightly submitted that the petitioner could not have summoned the bank officer on his own and therefore, it was necessary to issue witness summons to the bank officer to substantiate contentions of the defendant. It is true that application for issuing witness summons has been filed at the belated stage and that the proceedings have been protracted due to the petitioner. In view of

this, the Petitioner deserves to be saddled with cost of Rs. 5,000/-.

Hence, Writ Petition is disposed of by passing following order.

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order dated 28/10/2013 passed by the learned Civil Judge, S.D., Solapur is hereby quashed and set aside. The Petitioner shall deposit the cost of Rs. 5,000/- in the court of Civil Judge, S.D. at Solapur on or before 1st December, 2017.
- (iii) The learned Civil Judge, S.D. is hereby directed to issue witness summons to the bank officer of Bombay Mercantile Cooperative Bank Ltd.
- (iv) The learned Civil Judge, S.D. is hereby requested to make an endeavour to record evidence of the newly summoned witness on or before 30/1/2018 and shall proceed with further stages accordingly.
- (v) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV,J)