

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO. 4460 OF 2017

SITARAM RAGHO DHANGAR
VERSUS
BHAGWAN SHANKAR DHANGAR

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Advocate for Petitioner : Mr. S. B. Bhosale

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CORAM : V. K. JADHAV, J.
DATED : 28th MARCH, 2018

PER COURT:-

1. None present for the respondent. The petitioner/original plaintiff has filed application Exh.99 for issuance of witness summons. However, by impugned order dated 17.02.2017 the trial court has rejected the said application.

2. Learned counsel for the petitioner/original plaintiff submits that the petitioner wanted to examine only one witness i.e. Chief Executive Officer, Mr. Dhiraj Choudhari of District Central Cooperative Bank, Dhule, Branch at Garudbag, Dhule and the evidence of the said witness is necessary for the just disposal of the suit. Learned counsel submits that the petitioner/plaintiff would examine the said witness and

thereafter close his evidence.

3. None appears for the respondents though duly served with the notice of final disposal.

4. It appears that the trial court has rejected application Exh.99 on the ground that the petitioner/plaintiff had filed many applications and made so many attempts, however, failed to examine the witness. The trial court, has therefore, rejected the application.

5. It further appears that the petitioner/plaintiff has instituted the suit for the relief of declaration, possession, mesne profit and also for decree of perpetual injunction. In my opinion, the petitioner/plaintiff is entitled, as a last chance, to examine the said witness on condition that after examination of the said witness, the petitioner would close his evidence. Hence, I proceed to pass the following order.

ORDER

- I) Writ petition is allowed.
- II) The impugned order below Exh.99 dated 17.02.2017

in RCS no.25 of 2012 passed by Civil Judge (Junior Division), Shirpur is hereby quashed and set aside.

III) The petitioner/plaintiff is permitted to examine the witness as stated in application Exh.99 on condition that after examination of the said witness, the petitioner/plaintiff would close his evidence, as agreed before this court.

IV) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/