

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

942 WRIT PETITION NO.11177 OF 2018

Chandrabhagabai Pandurang Rajnor ... Petitioner

Versus

Hirabai Laxman Thorat ... Respondent

...

Mr. Sopan G. Bobde, Advocate for the Petitioner

Mr. S.S. Chapalgaonkar, Advocate for Respondent

...

Coram : N.M. Jamdar, J.

Date : 30 November 2018

Oral Order :

1 Heard the learned Counsel for the parties.

2 By this petition, the petitioner has challenged the order passed by the learned Civil Judge, Junior Division, Kopergaon dated 27 June 2018. The order passed by the learned Civil Judge was sou-motu, wherein he reviewed the earlier order without notice to both the sides and directed the issuance of witness summons.

3 While issuing notice to the respondent, this Court on 6
October 2018 passed the following order:

"1 The Petitioner/ original Plaintiff is aggrieved by the order dated 27.06.2018 passed by the Trial Court by which, the application Exhibit 59 filed by him in RCS No.16/2013 praying for issuance of summons to the Branch Manager, State Bank of India, which was earlier allowed, was suo moto reviewed and Exhibit 59 was rejected.

2 The learned Advocate for the Petitioner points out that Exhibit 59 was filed on 03.03.2018 seeking issuance of witness summons to the Branch Manager, State Bank of India, Nashik Road Branch. By order dated 24.04.2018, the Trial Court has allowed Exhibit 59 with the following order :-

"Allowed. Issue witness summons as prayed on Bhatta."

3 Thereafter, on 27.06.2018, the Trial Court dealt with Exhibit 59, though it was allowed and reviewed it's earlier order and rejected Exhibit 59. Neither any request was made by any of the litigating sides, nor did the Trial Court put the litigating sides to notice that it intends to re-consider the order below Exhibit 59.

4 Issue notice to the Respondent returnable on 30.11.2018.

5 Until then, the Trial Court would adjourn RCS No.16/2013.

6 The copy of the petition paper book for issuance of notice shall be supplied by the Petitioner on or before 19.10.2018, failing which, this petition shall stand dismissed without reference to the Court on 20.10.2018."

3 Upon a query to the learned Counsel for the respondent/ plaintiff whether it is an application for calling the witness was filed, it was informed that the learned Civil Judge suo-moto exercised the power that the learned Civil Judge could call a witness which according to the learned Civil Judge was material for the adjudication of the suit, is not in dispute, but the learned Civil Judge has exercised suo moto power of review without notice to either of the parties. Such exercise was not warranted. Accordingly, the order dated 27 June 2018 is quashed and set aside.

4 In case the learned Civil Judge finds that the witness i.e. the branch Manager, is a material witness and a witness summons has to be issued, the learned Civil Judge, before issuing the witness will give an opportunity to both the sides to put forth their say and then take a decision thereupon.

5 The Writ Petition is disposed of as above.

N.M. Jamdar, J.