

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

WRIT PETITION No. 13448 OF 2018

Shobhabai W/o Sahebrao Waghchaure	... Petitioner
Versus	
Manoj Baburao Admane	... Respondent

Mr. Y.D. Kale, Advocate for petitioner

Coram : N.M. Jamdar, J.
Date : 5 December 2018.

ORAL ORDER:

1. By this petition, the petitioner has challenged the order passed below application Exhibit No. 38 in Summary Civil Suit No. 19 of 2015 by the learned 5th Joint Civil Judge (Senior Division), Aurangabad, dated 6 October 2018 granting leave to defend to the respondent/defendant.

2. The learned Counsel for the petitioner contended that the respondent had earlier filed an application for grant of leave to defend the suit, which was not pressed by him and, therefore, the second application could not have been filed. The learned Counsel has also relied upon the decision of the learned Single Judge of this Court in case of *Gaurav Singhania Versus Matrix Agri. Science Pvt. Ltd. and others*¹. The defendant had entered his appearance on

¹ 2011(6) Mh.L.J. 304

15 July 2015. Thereafter, he filed his application for leave to defend, which was premature. The learned Civil Judge has noted that the petitioner has not served the summons for judgment as contemplated under Order XXXVII Rule 3(4) of the Civil Procedure Code and, therefore, the application which was filed for praying leave to defend had to be granted and just because the respondent had not pressed the earlier application which was premature, that will not preclude the right of the respondent.

3. As regards the decision of the learned Single Judge is concerned, the defendant therein had filed an application for leave to defend after 90 days of the summons for judgment being served on the defendant. The learned Single Judge held that in the circumstances, leave to defend was not proper. In the present case, the petitioner has herself not taken out the summons for judgment within a period of ten days, as specified under Order 37 Rule 3(4). In these circumstances, the learned Civil Judge had granted leave to defend. There is no error in the order passed by the learned Civil Judge.

4. The writ petition is accordingly rejected.

N.M. Jamdar, J.