

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3876 OF 2015

The Secretary,
Balaji Co-op. Hsg. Society .. Petitioner
vs.
Sarita A. Nakhawa & Ors. .. Respondents

Mr. Bhushan Joshi i/b. Mr. Joshi C. S. for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 12 JUNE 2018

P.C :

- 1] Heard Mr. Joshi for the petitioner.
- 2] The challenge in this petition is to the orders dated 14th July 2014 and 22nd January 2015 which have the effect of issuing / upholding the issue of witness summons to the Assistant Director of Town Planning and the Deputy Registrar of Co-operative Societies for deposing in RCS No. 1009 of 2012.
- 3] Mr. Joshi, the learned counsel for the petitioner submits that the names of these witnesses find no mention in the list of witnesses filed by the original plaintiff. He further submits that since evidence is being led only on preliminary issues, the deposition of such witnesses is neither necessary nor will be relevant for deciding such issues. He relies upon the decision of this Court in the case of ***Sanjay Sham Bagade & Anr. vs. Ramesh Hari Madan & Ors.***

[(2014) 4 All MR 19] in support of his submissions that issue of witness summons in such circumstances is unsustainable. Mr. Joshi also points out that before the order dated 14th July 2014 was made by the learned trial Judge, the petitioner was not granted any opportunity of furnishing his say or object to such issue. Mr. Joshi submits that this is an additional reason as to why the order dated 14th July 2014 is required to be set aside.

4] Upon perusal of the records and due consideration of Mr. Joshi's submissions, I find no jurisdictional error so as to interfere with the impugned orders.

5] It is true that before the order dated 14th July 2014 issuing witness summons was made, the petitioner, was not heard. However, thereafter, the petitioner filed a review petition. This review petition was entertained and all objections raised by the petitioner were duly considered. The review petition is however rejected by observing that no prejudice will be occasioned to the petitioner if the witness summons is issued since, the petitioner, will have sufficient opportunity to cross-examine the witnesses.

6] At this stage, it cannot be said that the examination of such witnesses is totally irrelevant or not necessary in support of the issues framed. The issues framed, involve mixed question of law

and fact. Merely on the ground that there was no mention of these witnesses in the list of witnesses furnished, is not a ground which bars the exercise of discretion. Ordinarily, such names have to be listed if a party seeks the assistance of the courts to secure the presence of the witnesses. In this case, some cause was shown and the discretion has been positively exercised by the learned trial Judge. It is not a case of unreasonable exercise of jurisdiction so as to warrant interference under Article 227 of the Constitution of India.

7] The ruling in *Sanjay Sham Bagade* (supra) stands on its own facts because in the said case, the application made by the party was bereft of any reasons as to why the party wanted to examine such witnesses after his examination was over. There was no sufficient cause whatsoever shown by the party in the said case.

8] For all the aforesaid reasons, this petition is dismissed. The interim order granted earlier is vacated. There shall however be no order as to costs.

9] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)