

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.592 OF 2018

SHRI SANT NAGEBABA MULTISTATE URBAN CREDIT SOCIETY LTD
VERSUS
RENUKADAS LAXMANRAO GHOLAP AND OTHERS

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Advocate for Petitioner : Shri Kotkar Sachin S.
Advocate for Respondent 1 : Shri Jayabhar D.R.
Advocate for Respondent 4 : Shri Dighe P.S. h/f Shri Darandale A.C.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 03, 2019

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PER COURT :-

1. This matter was heard on 16.1.2018 and the submissions of the petitioner / plaintiff were recorded as under:-

"1. The petitioner is aggrieved by the order passed by the trial Court dated 12.12.2017 (wrongly typed as 12.12.2018), thereby, rejecting application Exhibit 80, filed by the plaintiff seeking summons for calling defendants 2 and 3 as witnesses of the plaintiff.

2. Learned Advocate for the petitioner / plaintiff submits that the plaintiff had included defendants 2 and 3 in the list of witnesses. When summons were sought to be issued to defendants 2 & 3, scribe of a document and the Sub-Registrar, the same trial Court by order dated 6.12.2016, passed below Exhibit 80 in Spl.CS No.5 of 2015 observed that defendants 2 and 3 are ready to examine themselves when their turn comes and if they fail to enter

the witness box, the plaintiff would be at liberty to call them.

3. As these two defendants did not step into the witness box when the turn of the defendants to lead evidence came, the petitioner has prayed for issuance of summons to the said two defendants. Said prayer has been rejected.

4. Issue notice before admission to the respondents, returnable on 23.2.2018. Until the returnable date in the matter, the trial Court shall adjourn Special Civil Suit No.5 of 2015.

5. Copy of the petition paper book for issuance of notice shall be furnished on/or before 24.1.2018, failing which this petition shall stand dismissed without reference to the Court w.e.f. 25.1.2018."

2. Learned Advocate appearing for defendant No.1 points out from his affidavit in lieu of examination in chief that he had led evidence on his behalf and no statement is made in the said affidavit that he is deposing on behalf of defendant Nos.2 and 3 as well.

3. Learned Advocate appearing on behalf of defendant No.4 submits that he is unconcerned with this dispute.

4. Defendants 2 and 3, though served, have chosen to remain absent and have not caused an appearance in this matter.

5. I have considered the submissions of the learned Advocates for the appearing parties and have gone through the record. By order dated 6.12.2016, passed below Exhibit 80, the trial Court has recorded that if defendant Nos.2 and 3 did not enter the witness box, the plaintiff will have the liberty to seek issuance of summons for calling them for examination. A statement is made by the plaintiff that the names of defendant Nos.2 and 3 were included in his list of witnesses and therefore, he has filed Exhibit 80 seeking a direction to summon them. It was then, that the trial Court had recorded in its order dated 6.12.2016 that these two defendants would be summoned if they did not step in to the witness box.

6. In view of the above, the same learned Judge could not have rejected Exhibit 80 by the impugned order dated 12.12.2017 after passing the earlier order on 6.12.2016.

7. As such, this petition is allowed. Application Exhibit 80 is granted and the trial Court shall issue summons to defendant Nos.2 and 3.

(RAVINDRA V. GHUGE, J.)

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