

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

WRIT PETITION NO.12496 OF 2018

**SHOBHA RATANKUMAR GUTTIKA
VERSUS
TULSIDAS BANDU GAIKWAD**

...
Advocate for the Petitioner : Shri A. N. Raut

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th MARCH, 2019.

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PER COURT :

1. On 09/11/2018, this Court (Sunil P. Deshmukh – J.
-Vacation Court) has passed the following order :-

"1. Issue notice to respondent returnable on 21-11-2018.

2. Till returnable date, there shall be ad-interim relief in terms of prayer clause (E) on condition that to show bonafides petitioner shall deposit a sum of Rs.10,000/- before trial court by returnable date.

3. In addition to service through court process, petitioner shall serve respondent by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect by returnable date.

4. In case of failure to deposit the amount, serve respondent privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would automatically cease to operate.

5. Parties to act on copy of this order authenticated by court sheristedar."

2. On 21/12/2018, this Court noted that respondent had not caused an appearance. Again on 23/01/2019, the matter was adjourned. Today as well none appears for the respondent.

3. The petitioner plaintiff is aggrieved by the order dated 18/04/2018 passed by the Trial Court thereby rejecting application Exhibit 42 filed by the plaintiff in RCS No. 86/2009.

4. I heard the learned Advocate for the petitioner.

5. The record reveals that issues were cast on 08/07/2010. On 14/06/2016, an order of closing evidence purshis was passed against the plaintiff. He had examined his first witness on 08/06/2013 and his second witness was then examined on 20/09/2016. After setting aside the evidence closing order by the Trial Court, vide its order below Exhibit 32, the power of attorney holder of the plaintiff examined himself on 11/07/2017. Thereafter, the plaintiff again sought adjournments. Once again an application Exhibit 35 was filed

by the plaintiff seeking an opportunity to lead evidence and such a chance was once again finally granted.

6. The impugned order is an outcome of the no evidence order passed by the Trial Court on 14/11/2017 since the plaintiff was not supplying the details of the witness who is Superintendent of the Government Medical Hospital at Aurangabad. It is stated that when the impugned order was passed, the plaintiff was ready to supply the details of the Medical Officer, as is evident from paragraph 1 of the impugned order. It is stated across the bar that on any given date, the petitioner plaintiff would furnish the details of the Medical Officer of the said hospital for issuance of summons. She has already deposited the amount of Rs. 10,000/- before the Trial Court.

7. In view of the above and since this Court has granted ad interim relief to the petitioner on the condition of depositing Rs. 10,000/-, this petition is partly allowed. The impugned order dated 18/04/2018 is quashed and set aside and application Exhibit 42 is partly allowed with the following directions :-

- (a) The sole respondent shall withdraw the amount of Rs. 10,000/- (Rs. Ten Thousand only) along with interest, if any, without conditions, from the Trial Court.
- (b) The petitioner plaintiff shall submit the details of the Medical Officer, Ghati Hospital, on or before 16/03/2019 before the Trial Court. If the said purshis contains any shortfall in details, the petitioner's request to examine the Medical Officer, would stand rejected with effect from 16/03/2019.
- (c) If the details are furnished to the satisfaction of the Trial Court, a summons would be issued to the said witness.
- (d) The plaintiff thereafter shall be restrained from seeking any adjournments in this matter.
- (e) The statement of the petitioner plaintiff is recorded that this Medical Officer is her last witness and henceforth she will not apply for either re-examining any other witness or recalling any witness or seek liberty to examine any more witnesses.

(RAVINDRA V. GHUGE, J.)

shp/-