

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6790 OF 2016

Suresh T. Patil .. Petitioner
vs.
Shivaji V. Patil and anr. .. Respondents

Mr. D.B. Shinde for the Petitioner
Mr. Umesh R. Mankapure for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 23 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. Shinde for the petitioner and Mr. Mankapure for respondent No.1.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 2nd December 2015 by which learned Trial Judge has dismissed the petitioner's application seeking witness summons to some of the witnesses.

4] The impugned order dated 2nd December 2015 reads thus:

*“Read the application and say.
Heard the parties, Plaintiff can brought the documents
which is in custody of witness No.1. Such
documents/copies are not forthcoming. So far witness
No.4 & 5 are concerned, the documents and witness is
not appearing relevant to fact in issue.
Hence, application partly allowed.
Issue witness summons to No.2 & 3.”*

5] According to me, the impugned order is quite cryptic and bereft of any reasons. Mr. Mankapure, learned counsel for respondent No.1, points out that even the application was entirely vague and therefore, there was no option but to dismiss the same with a vague order. The criticism of Mr.Mankapure to certain extent is justified. However, the application was required to be read alongwith the pleadings.

6] In any case, it cannot be said that the witnesses to whom the petitioner seeks summons are entirely irrelevant to the case pleaded by the petitioner in the plaint. The application, though vague, was required to be considered along with averments in the plaint.

7] For the aforesaid reasons, the impugned order dated 2nd December 2015 is set aside and the petitioner's application at Exhibit-125 is hereby granted.

8] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

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

(M. S. SONAK, J.)