

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

WRIT PETITION NO.5863 OF 2022

Ravindra S/o Pandurang Chaudhar	]	
Age : 50 Years, Occu.: Service,	]	
R/o. Vasujalgaon, Tq. Shevgaon,	]	
Dist. Ahmednagar,	]	
Presently residing and working	]	
with Traffic Police, Pune.	]	... Petitioner
		(Defendant)

Versus

Trimbak S/o Shivram Bade,	]	
Age : 80 Years, Occu.: Agri.,	]	
R/o. Pathardi, Dist. Ahmednagar,	]	
Tq. Pathardi, Dist. Ahmednagar,	]	
Presently residing at Sarasnagar,	]	
Behind Market Yard, Ahmednagar,	]	
and Wagholi, Tq. Shevgaon,	]	
Dist. Ahmednagar.	]	... Respondent
		(Plaintiff)

...

Advocate for Petitioners : Mr. Arvind G. Ambetkar
Advocate for Respondent (Caveator) : Mr. Nilkanth D. Batule

...

CORAM : MANGESH S. PATIL, J.

DATED : 22 JUNE 2022

ORAL ORDER :

1. Heard the learned advocates of both the sides.
2. Rule. Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner is the defendant in the suit wherein by moving an application (Exh.254), he sought witness summons to be issued without indicating either the names of the witnesses or the relevance of the facts intended to be brought on record through these witnesses. Even a list of witnesses was never filed. For these reasons alone, by the order under challenge the trial court has rejected the application.

4. There is no dispute about the fact that no witness list has ever been filed by the petitioner in the suit. Even the application (Exh.254) is as vague as it could be. It appears that on petitioner's failure to lead any evidence, the trial court had passed the order on 24 February 2022 and directed that there would be no evidence on behalf of petitioner and further directed the suit to be listed for arguments. By moving the application (Exh.254), the petitioner prayed to set aside order dated 24 February 2022 (supra) and sought permission to lead evidence.

5. However, pertinently, apart from the fact that till then no list of witness was furnished by him, even the application was devoid of any names of the witnesses he intended to examine. He also did not disclose the facts or the points on which he intended to examine the witnesses.

6. In the circumstances, the trial court cannot be said to be unjustified in rejecting the application, for the reasons mentioned therein.

7. However, the parties are still before the trial court. Though there is lapse on the part of the petitioner to lead evidence, the procedure which is considered to be hand-maid of justice should take a back seat. Though in substance, there is no illegality in the order, it would be appropriate to dispose of the petition by keeping open the option to him to make a proper application.

8. Writ petition is dismissed, however, it would be open for the petitioner to move appropriate application giving all the particulars as expected by the trial court in the order under challenge.

9. The respondent would be entitled to oppose that application and the trial court shall decide the application on its own merits, uninfluenced by the observations made herein above.

10 Hearing of the suit is expedited.

(MANGESH S. PATIL, J.)

Tandale/-