

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12403 OF 2018**

BABAN JAGANNATH NARODE
VERSUS
DNYNDEO DEORAM PATHARE

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Mr. M. G. Kolse Patil, Advocate for the Petitioner.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 16th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioner challenges the order dated 28.09.2018 passed by the Civil Judge, Junior Division, Rahuri directing that the evidence of the plaintiff would stand closed.

2. When the petition appeared for admission, this Court passed following order on 02.11.2018:

“1. The petitioner plaintiff is aggrieved by the order dated 28/09/2018, by which, his evidence in RCS No. 417/2012 has been closed.

2. I have heard the learned Advocate for the petitioner.

3. The impugned order indicates that the plaintiff has not taken any steps to lead further evidence for more than a year. No steps were taken and no adjournment was sought. Finally the Trial Court has closed his evidence. It is submitted that the petitioner desires to examine the Mandal Adhikari (Circle Officer) and the Tahsildar.

4. On the condition that the petitioner shall deposit an amount of Rs. 10,000/(Rs.Ten Thousand only) before the Trial Court on or before 30/11/2018, issue notice to the respondent, returnable on 12/12/2018.

5. Until then, the Trial Court would adjourn RCS No. 417/2012.

6. Needless to state, if the amount is not deposited, the Trial Court would proceed with the matter. No extension of time would be granted to deposit the amount.

7. The learned Advocate has tendered an extra copy of the Writ Petition, for issuance of notice to the respondent, in the Court and the same is taken on record.”

3. None appears for respondent. It appears that petitioner has served respondent by private notice. Office record shows that notice has been served on respondent. Considering the nature of the order that has already been passed and also in view of the fact that the suit has been stayed for the last more than four years, it would not be appropriate to wait any further for appearance of respondent.

4. Plaintiff/Petitioner wants to examine two witnesses namely Circle Officer and Tahsildar. Rather than keeping petition pending any further, it would be appropriate to permit petitioner/plaintiff to examine two witnesses by setting aside the impugned order dated 28.09.2018.

5. Accordingly, writ petition is allowed. Order dated 28.09.2018 passed by the Civil Judge, Junior Division, Rahuri is set aside. Petitioner/Plaintiff shall be at liberty to examine Circle Officer and Tahsildar as his witnesses. Plaintiff to take immediate steps for examination of the said two witnesses and complete their evidence on or before 28.02.2023.

6. The amount of Rs.10,000/- deposited by petitioner/plaintiff in the Trial Court shall be withdrawn by respondent/defendant.

7. With the above directions, writ petition is disposed of.

(SANDEEP V. MARNE)
JUDGE