

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 700 OF 2021

JSW Steel Limited ... Petitioner  
V/s.  
Janardan Vithu Mhatre & Another ... Respondents

Mr. Rishi Soni a/w. Mr. Sunil Gangan, Mr. S. M. Seegarla i/b RMG  
Law Associates for the Petitioner.

Mr. C. G. Gawnekar a/w. Mr. Ashutosh Gavnekar for Respondent  
Nos.1 and 2.

**CORAM : AMIT BORKAR, J.**

**DATE : 27 JANUARY 2022.**  
**(Through Video Conferencing)**

**P. C. :**

By this petition under Article 227 of the Constitution of India, the Petitioner, the original plaintiff has challenged the order dated 15/11/2019 rejecting the Application for issuance of summons to the witnesses as sought by the Petitioner.

2. The Petitioner is original plaintiff, who has filed a suit for specific performance. Pending the suit the Petitioner filed Application Below Exhibits Nos.87, 88 to issue witness summons to the witnesses of the Agreement to Sale, which is the subject matter of the suit. The learned Trial Court rejected the Application for issuance of witness summons relying on the judgment of this court in *Mrs. Anju Toshniwal and Ors. vs. Expat Properties India Ltd. in*

*Writ Petition No.3685/2019* and also for the reason that the Petitioner has failed to show sufficient cause to issue summons to the witnesses.

3. The petitioner has challenged said order by way of present petition. This Court by order dated 26/2/2021 issued notice for final disposal making it returnable on 5/4/2021 with cost of Rs.5,000/-. The learned Advocate for the Petitioner stated that the Petitioner has deposited Rs.5000/- in compliance with the said order.

4. The learned Advocate for the Petitioner submits that in the interest of justice the Court ought to have allowed the Application for issuance of witness summons. He submitted that the by paragraph No.1 of the Application, Petitioner has shown sufficient cause to issue witness summons. He submitted that the judgment in the case of *Anju Toshniwal (cited supra)* relied upon by the learned Trial Court is distinguishable on the facts of this case. He submitted that in the interest of justice the Petitioner needs to be given an opportunity to examine the material witnesses.

5. The Learned Advocate for the Respondent invited my attention to the provisions of Order 16 Rule 1 and Order 16 Rule 3 of the Civil Procedure Code, 1908 (CPC for short). According to him the language of Order 16 Rule 1 of CPC is mandatory in nature. He submitted that at least in compliance with Order 16 Rule 3 of

CPC it was necessary for the Petitioner to show sufficient cause so that witnesses whose names do not appear in the list of witnesses submitted under Order 16 Rule 1 of CPC could be examined. He submitted that there is no cause shown by the Petitioner, much less sufficient cause for issuing witness summons to the witnesses on Agreement to Sale.

6. I have carefully considered the impugned order. I have also considered the judgment of this Court in the case of *Anju Toshniwal (cited supra)*. This court in the said case was dealing with issue in the context of examining a party to the suit, held that if a person is the party to the suit, it is not expected of him to examine himself after all the witnesses are examined and thereafter fill in the lacunae by examining himself. In my opinion the said judgment is distinguishable in the facts of the present case as the Petitioner has filed an Application for examining the witnesses to the Agreement to Sale, who are not party to the suit.

7. Insofar as the second reason given by the learned Trial Court to reject the application viz., absence of sufficient cause to issue witness summons is concerned, in my considered opinion there is no cause pleaded by the Petitioner to satisfy “sufficient cause” as contemplated by Order 16 Rule 3. Therefore in my opinion the rejection of application by the learned Trial Court on the ground of absence of sufficient cause cannot be faulted with.

8. However in the interest of justice considering the nature of controversy involved between the parties and substantive rights of the parties are likely to be affected, it is necessary to give an opportunity to the Petitioner to file a fresh application. The Petitioner is therefore entitled to file a fresh application showing “sufficient cause” as to why the names of witnesses sought to be examined were not mentioned in the list of witnesses submitted under Order 16 Rule 1 of CPC. If such a application is filed by the Petitioner, the learned Trial Court shall decide the said application on its own merits without being influenced by the reasons given in the present order.

9. With the above clarification, the present writ petition is disposed of.

**(AMIT BORKAR, J.)**