

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.202 OF 2022

(Shivani Kamal Kumar Sarda (currently known as Shivaji w/o Amit Bhaiyya) Vs.
Pooja Vishal Rathi d/o Kisangopal Sarda)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Deoul Pathak, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 13th JANUARY, 2022.

The petitioner is the plaintiff in Special Civil Suit 12/2015 which is instituted seeking recovery of Rs.8,00,000/- (Rupees Eight Lakhs) on the premise that the said amount represents the loan extended to the defendant.

2. The plaintiff closed her evidence and so did the defendant.

3. After the closer of the evidence an application styled as "application for permission to call the defendant and bank Manager as witnesses" which is signed only by the counsel, was filed. This application is dismissed by the learned trial Judge vide order dated 30.11.2021.

4. The learned trial Judge reasoned that the suit is fixed for final arguments and the defendant cannot be compelled to enter into the witness box since she has

adduced her evidence through her power of attorney who is duly cross-examined. The trial Judge further reasoned that the plaintiff has not given any explanation for not summoning the bank Manager as her witness. The trial Judge observes thus:

6. So far as the calling of bank Manager as a witness for plaintiff is concerned, in this regard no plausible explanation is given by the plaintiff as to why the said witness was not called earlier. Moreover, the reason for examination of such witness also not specified. Thus, it appears that, by moving the present application, the plaintiff is attempting to fill up the lacuna which is not permitted in law. Moreover, the plaintiff had got full opportunity to adduce evidence. Granting of present application will amount to reopening to the case and if such a practice adopted and allow, there would be no end of the litigation. The present matter is more than 7 years old and if it is again reopened it will call prejudice to the defendant. Hence, I found no substance in the present application and passed the following order-

ORDER

1. The application is rejected.
2. List the case for final argument.

5. I do not see any error in the order impugned.

6. The petition is dismissed.

JUDGE