

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

WRIT PETITION NO. 374 OF 2022

Manoj Rajendra Gupta,
Aged 48 years, Occupation – Business,
R/o Rajde Plot, Akot, Tq. - Akot,
District – Akola.

.... **PETITIONER**

VERSUS

1) Syd. Maqsoodali Syd. Sikandarali,
Aged 56 years, Occupation – Cultivator,
R/o Khatibpura, Akot, Tq.- Akot,
District – Akola.

2) Abdul Rajik Abdul Sattar,
Aged 50 years, Occupation – Cultivator,
R/o Dharolives, Akot, Tq. - Akot,
District – Akola.

.... **RESPONDENTS**

Mr. V.K. Paliwal, Counsel for the petitioner,
Mr. D.R. Khapre, Counsel for the respondents.

CORAM : ROHIT B. DEO, J.
DATED : 4th APRIL, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule is made returnable forthwith. With consent,
the petition is heard finally.

2. The petitioner is the defendant in Special Civil Suit 46/2018 (Old

Special Civil Suit 76/2017) instituted by the respondents-plaintiffs seeking recovery of amount of Rs.14,47,500/- (Rupees Fourteen Lac Fourty Seven Thousand Five Hundred).

3. The defendant did not appear despite service of summons. The bailiff report is that the summons was served on the wife of the defendant. The trial Court proceeded *ex parte*. The defendant preferred an application under Order IX Rule 7 of the Civil Procedure Code (Code) which the learned trial Court rejected vide order dated 02-4-2019. The order of rejection of application under Order IX Rule 7 of the Code was assailed in Writ Petition 6928/2019, which this Court dismissed vide order dated 17-1-2020.

4. The defendant then preferred applications Exhibit 48 and Exhibit 49 seeking to participate in the proceedings and permission to file written statement on record, respectively.

5. Vide order dated 23-3-2021 the learned trial Court rejected both the applications on the premise that in view of the judgment dated 17-1-2020 in Writ Petition 6928/2019, the applications are not tenable.

6. The learned trial Court is right in the conclusion reached

although the consideration qua application Exhibit 48 is not quite appropriate. Application Exhibit 49 which sought permission to place on record the written statement, was clearly not tenable and the learned trial Court is right to that extent. Application Exhibit 48, however, sought permission to participate in the proceedings. This application could not have been rejected on the ground of tenability. Even party against whom *ex parte* order is passed, is entitled to participate in the suit. However, as appears to be the settled law, and a reference may be made only to the decision of the Hon'ble Supreme Court in ***Sangram Singh v. Election Tribunal Kotah and another, AIR 1955 SC 425*** pressed in service by Mr. D.R. Khapre, the clock cannot be set back. While the defendant is indeed entitled to participate in the proceedings to a limited extent, which in the present case would be to advance argument, the submission of the learned Counsel Mr. V.K. Paliwal that he may be permitted to cross-examine the witnesses of the plaintiffs, cannot be accepted. Had the defendant appeared at the stage of the evidence, he could certainly have cross-examined the witnesses, albeit to a limited extent since there is no defence as such on record. However, the defendant appeared after the stage of evidence and when the suit was adjourned for final hearing. In this view of the matter, the request to permit the defendants to cross-examine the witnesses cannot be entertained.

7. The petition is dismissed with the clarification that the defendant is entitled to advance the arguments, as is fairly not disputed by the learned Counsel for the plaintiffs Mr. D.R. Khapre.

JUDGE

adgokar